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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA

4 v.

11 Cr. 62 (PAC)

5 DONNA LEVY,
6 DAVID LEVY,

Jury Trial

Defendants.

7 -----x

8 New York, N.Y.
9 March 12, 2013
10 10:00 a.m.

Before:

11 HON. PAUL A. CROTTY

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

17 CARRIE H. COHEN

HOWARD S. MASTER

18 Assistant United States Attorneys

19 HOWARD M. SREBNICK

20 NOAH FOX

ALEX ARTEAGA-GOMEZ

21 Attorneys for Defendant Donna Levy

22 GERALD L. SHARGEL

23 ROSS M. KRAMER

JENNIFER HAYS

24 Attorneys for Defendant David Levy

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1 (Trial resumed; jury present)

2 MICHAEL SWARTZBURG, resumed.

3 THE COURT: Ms. Cohen.

4 Mr. Swartzburg, you're still under oath.

5 THE WITNESS: Yes, sir.

6 DIRECT EXAMINATION

7 BY MS. COHEN:

8 Q. Mr. Swartzburg, if we could turn back briefly to a document
9 we talked about yesterday, or you talked about yesterday, which
10 is in your binder as Government Exhibit 201-40. It's sort of
11 in the middle of your binder. It's the share reduction memo in
12 the Exhibit A.

13 A. Yes.

14 Q. Do you see that under Zev Helfer there is a number of
15 people listed: Bedrock Ventures, which I believe you said was
16 Fotis's company?

17 A. Yes.

18 Q. And David Champion?

19 A. Yes.

20 Q. Have you ever met David Champion?

21 A. No.

22 Q. John Fisher. Then there are some of Fotis's relatives in
23 the next three, Georgiadises, Kodel Investment, Moty Landau,
24 David Newren, Date Palm Capital.

25 A. Yes.

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Swartzburg - direct

1 Q. After the reduction, were the shares of Date Palm Capital
2 issued restricted or unrestricted?

3 A. I believe they were unrestricted.

4 Q. I believe you testified after the share reduction David
5 Levy also converted his promissory note to almost 2 million
6 free-trading shares, right?

7 A. Yes.

8 Q. After that happened, what success did you have finding
9 investors for Cardiac Network?

10 A. I think we had moderate success. We were able to bring
11 interested investors, accredited investors, into the company,
12 enough to support its base operations. We still were looking
13 for larger investors to really expand the company.

14 Q. When you say "we," who are you referring to?

15 A. I say "we," mostly me. There was the board of directors,
16 but I was really the one responsible for running the company.

17 Q. Did you issue press releases regarding the activities of
18 Cardiac Networks during the time you were CEO?

19 A. Yes.

20 Q. I'm going to ask you to look at what is marked for
21 identification as Government Exhibit 201-41. It is towards I
22 believe the beginning of the binder.

23 A. Yes.

24 Q. Do you recognize the documents that have been marked
25 Government Exhibit 201-41?

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Swartzburg - direct

1 A. Yes.

2 Q. What do you recognize them as?

3 A. These are press releases that I would issue whenever I had
4 news to report about the company.

5 MS. COHEN: Your Honor, the government moves
6 Government Exhibit 201-41 into evidence.

7 MR. SHARGEL: No objection.

8 THE COURT: 201-41 is received in evidence.

9 (Government's Exhibit 201-41 received in evidence)

10 MS. COHEN: If we can run through these quickly. Mr.
11 Dinet, if you could scroll through them.

12 Q. Who wrote these press releases?

13 A. I did.

14 Q. What involvement did Donna Levy have in the press releases?

15 A. No involvement in the press releases except maybe the
16 introduction. When I first came on to the company, I wanted
17 everybody to kind of see what I was thinking about in terms of
18 introducing myself.

19 Q. Other than the initial press release introducing you as the
20 new CEO, what involvement did Donna Levy have in the press
21 releases for Cardiac while you were CEO?

22 A. None.

23 Q. Who would decide when to issue a press release?

24 A. I would.

25 Q. When would you issue a press release?

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Swartzburg - direct

1 A. Generally, if we signed a new contract with a strategic
2 partner or some other event that was worthy of issuing a
3 release for.

4 Q. You came in I believe in the summer, August, 2008,
5 September 2008?

6 A. Yes.

7 Q. In 2009 you were looking for funding, other investors,
8 right?

9 A. Yes.

10 Q. What happened to the finances of Cardiac Network through
11 2009?

12 A. We always sort of were in a fire drill mode. We did
13 receive money from various sources, investors, and the initial
14 money that I received from Fotis and David Levy.

15 Q. I'm sorry to interrupt. How much was that again?

16 A. That was initially \$40,000. It allowed me to have a staff
17 of about 4 to 6 Cardiac technicians that would monitor heart
18 patients. It allowed me to have an office manager, someone who
19 oversaw the clinical. That was about it.

20 Q. What happened when the fire drills didn't work out?

21 A. I would either have to seek out money from small investors
22 that would put in 5, 10, \$20,000, or I would go to Fotis or
23 David Levy and let them know that we were in need of emergency
24 funding.

25 Q. What did David Levy say to you when you would ask him for

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1 emergency funding?

2 A. David Levy, especially in the beginning, was very
3 supportive. He would help out and perhaps give small amounts
4 to money to make payroll. That was more so in the beginning.

5 Q. After the beginning, what happened to your requests to
6 David Levy for money?

7 A. I continued to make requests, and in some cases again I was
8 able to get small amounts to help out.

9 Q. What did David Levy say to you when you made other requests
10 for money in 2009 to help Cardiac Networks stay on its feet?

11 A. David Levy did say that it's time for Cardiac Network to
12 stand on its own two feet. He felt that he had put enough
13 money into the company previously and that it was really up to
14 the company to go out and find new investors and to try to make
15 a business.

16 Q. Throughout 2009 how much money did David Levy give to
17 Cardiac Networks overall?

18 A. I can remember, probably again from 2008 through 2009,
19 looking at a revised promissory note of about a hundred
20 thousand dollars. So I would say about a hundred thousand
21 dollars, including the 20.

22 Q. What do you mean when you say revised promissory note?

23 A. After it reached about a hundred thousand dollars, we
24 agreed to put a new promissory note in place that would track
25 the money that had been invested.

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1 Q. When you say we agreed, who agreed to do a promissory note?

2 A. David Levy and I discussed it and the board of directors
3 was OK with it.

4 Q. What did the promissory note do? What did it say?

5 A. It was a promissory note that would have been similar to
6 the previous promissory note in that it was convertible. So it
7 would document the amount of money invested as well as that I
8 have a provision for converting to stock.

9 Q. Who was the promissory note between?

10 A. It would either be David Levy or Date Palm Capital. I
11 think it was possibly Date Palm Capital, but I'm not a hundred
12 percent sure.

13 Q. Would the promissory note be one where Cardiac Network
14 agreed to pay back to David Levy or Date Palm Capital the
15 hundred thousand dollars or agree to convert the note into
16 shares in Cardiac Network, like the first promissory note?

17 A. Yes.

18 Q. Was Fotis's name or his company Bedrock Ventures part of
19 that promissory note?

20 A. No.

21 Q. What money did Fotis lend to the company in 2009?

22 A. After the initial \$20,000 in 2008, I did go back to Fotis
23 and also ask for additional funding. I know for sure about
24 \$5,000. It may have been another \$10,000, I don't remember.

25 Q. What promissory note did Cardiac Networks enter into with

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1 Fotis for the 5 or \$15,000?

2 A. We did not.

3 MR. SHARGEL: Objection.

4 THE COURT: I think it is 5 or 10, not 5 or 15.

5 MS. COHEN: I thought it was 5 and then there would be
6 another 10. My apologies.

7 Q. How much did Fotis lend? Let's go back over that so
8 there's no confusion.

9 A. I think it was at least 5,000, and I think there might have
10 been roughly another \$10,000, but I don't remember
11 specifically.

12 Q. What promissory notes did Cardiac Network enter into with
13 Fotis for any amount of money that Fotis lent to Cardiac
14 Networks in 2009?

15 A. We never did any other notes for Fotis.

16 Q. What happened in 2010 to Cardiac Networks? What was going
17 on?

18 A. In 2010, due to a lack of funding and perhaps an
19 opportunity to look outside the company for newer technologies,
20 we stopped monitoring patients internally. We continued to
21 monitor patients through an outsourced monitoring program with
22 Kaiser, and it became all about trying to save the business by
23 either looking for someone to acquire the company or some kind
24 of other relationship.

25 Q. Why were you looking to be acquired or enter into some

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1 other relationship with another company?

2 A. The expenses of running the business the way it was was not
3 working. We didn't have the money to do it. So we had to look
4 for other alternatives for the business.

5 Q. What alternative did you find?

6 A. One of the things that came up, there were a couple of
7 potential strategic relationships. But one of the ones that
8 came up strongly was Cardiac Network was approached by an
9 inventor of a new technology that said this person could
10 perhaps create a new cardiac monitor that would be better than
11 the ones we were using perhaps, and it would require us to
12 invest money into a prototype cardiac monitor in order to get
13 this new technology.

14 Q. What discussions did you have with David Levy about working
15 with this new company to create the new technology?

16 A. In order to get this new technology, it required an
17 investment. I approached David Levy, investors, about trying
18 to get roughly a couple hundred thousand dollars that was being
19 asked for in order to invest in this new technology.

20 Q. What did Levy say to you when you approached him for money
21 to invest in the new technology?

22 A. He was not interested until some kind of a prototype or
23 other proof of concept was delivered.

24 Q. What happened to your discussions with this other company
25 to develop new technology?

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1 A. The discussions led to us investing about 200 or a little
2 over \$200,000 into this new technology.

3 Q. Where did Cardiac Networks come up with the \$200,000?

4 A. Along with this new technology, an investor came forward
5 that said they believed in this new technology and that they
6 would be willing to put in initially \$200,000 that was being
7 asked. But the condition was it had to go to this new
8 technology, it could not be used for Cardiac's operations.

9 Q. Did Cardiac accept the money and invest it in the new
10 technology?

11 A. Dollar-for-dollar we took the 200,000 in and immediately
12 wired the 200,000 to the new technology company.

13 Q. What happened after Cardiac Networks invested in the
14 company with the new technology?

15 A. The inventor wanted more money before they would deliver
16 anything.

17 Q. What happened to your employment at this time?

18 A. Well, the investor, even though the inventor wanted more
19 money, still believed in the technology. I was skeptical. I
20 had also found some articles that made me even more skeptical
21 about the new technology. So I chose to go -- I did not want
22 to support it. As a result of not supporting it, it created a
23 conflict with me and these new investors. Ultimately, that
24 conflict led to me being voted out as CEO.

25 Q. When were you voted out as CEO of Cardiac Networks?

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1 A. May of 2011.

2 Q. You testified earlier that in the beginning you got paid
3 your salary at half rate. Do you recall that?

4 A. Well, the deal was I would get paid my salary at half and
5 the rest would be deferred, but only so long as there was money
6 in the account. After the first month I did receive \$10,000,
7 which would have been about a month worth of salary, that first
8 month of September. But it became obvious that for me to take
9 salary would take away my ability to make payroll for the
10 existing employees, so I stopped taking salary.

11 Q. You testified earlier that as part of your deal coming in,
12 you were to get some stock or some options in Cardiac Network?

13 A. Yes. I received options as part of my initial agreement.
14 But as soon as I stopped taking salary, as part of the share
15 reduction, I was able to receive a little over 2 million
16 shares, actual shares in the company.

17 Q. What kind of shares did you receive?

18 A. Those were restricted shares, so I could not sell those.

19 Q. Why were your shares restricted?

20 A. They were restricted primarily because I'm considered an
21 insider as the CEO of the company. So when shares were issued
22 to me as the CEO, they came with a restrictive legend.

23 Q. I think you also said when you first started at the company
24 you reviewed all the outstanding shares in Cardiac Networks,
25 right?

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1 A. Yes. I received a list of all of the outstanding shares
2 from our registrar.

3 Q. What shares did you see that Cardiac had issued to a
4 company American Media?

5 A. Consistent with when I first got to the company and
6 reviewed an agreement, I noticed that there were about
7 12 million shares issued to a company called American Marketing
8 Complex, which was actually then segregated into a group that
9 was all affiliated with American Marketing Complex.

10 Q. What person was American Marketing Complex associated with?

11 A. To me American Marketing Complex and a gentleman by the
12 name of Norman King were indistinguishable.

13 Q. What did you learn about the shares that had been granted
14 to American Marketing Complex?

15 MR. SHARGEL: May we have a foundation? We have no
16 foundation from where he learned it.

17 THE COURT: I thought he learned it from dealing with
18 the registrar.

19 MR. SHARGEL: No, I don't think -- well, I don't want
20 to say.

21 MS. COHEN: I'll rephrase, your Honor.

22 THE COURT: Thank you.

23 Q. What did you learn about the shares that had been granted
24 to American Marketing and how did you learn it?

25 A. When I first came into the company, I was aware of

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1 12 million shares issued as part of an agreement with the
2 company and American Marketing Complex and that I believed
3 those shares were -- I know they were restricted, but I didn't
4 believe they should ever have been issued in the first place.

5 Q. Why did you form the belief that the shares should not have
6 been issued?

7 A. Under the agreement that the shares were issued under, it
8 said that Cardiac Network would receive some form of value in
9 exchange for those shares. I don't feel the company received
10 anything of value in exchange for those shares.

11 Q. What discussions did you have with David Levy about those
12 12 million shares to American Marketing?

13 A. David Levy knew about the issuance, which was what prompted
14 me to look for them. David Levy also believed those shares
15 were issued improperly.

16 Q. Who was responsible for issuing those shares?

17 A. The previous CEO, Zev Helfer.

18 Q. What did you do with respect to the 12 million shares that
19 had been issued to American Marketing?

20 A. Our counsel tried to make some phonecalls to Norman King
21 explaining that we wanted those shares returned, and initially
22 Norman King agreed, but we never got the shares back.

23 Q. What evidence of fraud did you find by Norman King or
24 American Media with respect to that deal?

25 A. I believe they misled the company as to the value of what

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Swartzburg - direct

1 Cardiac Network was supposed to receive in exchange for those
2 shares.

3 Q. What evidence of fraud did you find with respect to Zev
4 Helfer and his decision to enter into that agreement?

5 A. No evidence, just bad decisions.

6 Q. I think you said when you came in as CEO you made Zev
7 Helfer the VP of worldwide marketing, is that right?

8 A. Yes.

9 Q. When you made the decision to make Mr. Helfer VP of
10 worldwide marketing, was that before or after you had become
11 aware of the issue with the American Marketing shares?

12 A. After.

13 Q. Turning to the stock price of Cardiac Networks during the
14 time that you were CEO, in the beginning what was the stock
15 price?

16 A. We were what is called a penny stock, so we were trading,
17 as I remember, maybe 20 cents a share seemed to be about an
18 average.

19 Q. What had David Levy said to you in the initial discussions
20 you had with him before you joined the company about the share
21 price?

22 A. I was informed that the share price at one point had been
23 trading as high as call it dollars per share instead of pennies
24 per share and there was a belief that that stock price could
25 eventually go up if the company rebuilt its business.

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1 Q. In the beginning, when you became the CEO of Cardiac
2 Networks, the share price, you said, was in pennies?

3 A. About 20 cents a share, yes.

4 Q. What happened to the stock price during the time you were
5 at Cardiac Networks as its CEO?

6 A. It did fluctuate. It went up, it went down. There were a
7 couple of times it went up a lot, but mostly it stayed roughly
8 between 20 and 30 cents a share, sometimes as low as 10 cents a
9 share.

10 Q. When were the few times that you recall the share price
11 went up a lot?

12 A. Probably once a year, I think in 2009 and in 2010, there
13 were spikes. Certainly in 2010.

14 Q. Let's start with 2009. What did you see regarding the
15 stock price in Cardiac Networks in 2009?

16 A. I can remember at least once where the stock price did go
17 up, doubled, maybe as high as 40 centers a share. At that same
18 time the volume of shares also increased.

19 Q. What do you mean by the volume of shares?

20 A. Aside from setting a price per share, when stock is traded
21 publicly there is a number of shares that trade in a given day.
22 Cardiac Network may have had call it 10,000 shares trading on a
23 given day. When the price went up, the amount of shares that
24 traded went up as well.

25 Q. How long did the stock price of Cardiac Network stay up at,

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1 I think you said it was doubled up to 40 cents?

2 A. I don't remember specifically, but it was more in days,
3 maybe a week. It didn't stay up for very long, and it slowly
4 came back down again.

5 Q. What was going on at Cardiac Networks that might have
6 caused an increase in the stock price, a doubling in the stock
7 price?

8 A. Just regular operating activities. Just, again, trying to
9 build the business.

10 Q. Was there any big contract or any big event that would have
11 caused the stock price to double?

12 A. Nothing that I could say was out of the scope of normal
13 building the business.

14 Q. What conversations did you have with David Levy in 2009
15 when you saw the stock price double for a couple of days?

16 A. Either as the price was going up or going down, I would ask
17 David Levy and the other investors if they were doing any
18 activity that would have cause the price to fluctuate.

19 Q. What did David Levy say to you when you asked him why the
20 stock price was fluctuating in 2009?

21 A. He said he wasn't doing any activity that would cause that
22 to happen.

23 Q. Why did you ask David Levy about what he knew about why the
24 stock price was going up?

25 A. I asked David Levy and other major shareholders because

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1 they were the ones who had large blocks of stock. They were
2 the only ones I could ask.

3 Q. You said you asked other investors. Did you ask Fotis why
4 the stock price was going up?

5 A. Yes, I also asked Fotis Georgiadis, and he replied that he
6 was not doing any trading activity as well.

7 Q. You said there was a second time that the stock price of
8 Cardiac Networks went up, and I believe you said that was 2010?

9 A. Yes.

10 Q. What do you recall the stock price going up to and what do
11 you recall about the volume?

12 A. That one I also recall the stock price going up. I'm sure
13 it went up at least to 40, maybe even as high as 50 cents a
14 share, from recollection. The volume was also significantly
15 higher during that period of time as well.

16 Q. What was going on in the company at the time in 2010 when
17 you recall the stock price getting as high as 40, maybe 50
18 cents, the volume being high?

19 A. Again, similar, just business-building activities.

20 Q. Was there any big event or big news that would have caused
21 the stock price to go up?

22 A. Nothing that I could say specific to that.

23 Q. What discussions did you have with David Levy when the
24 stock price went up again in 2010?

25 A. Made similar inquiries, as I wanted to understand if there

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1 was anything that either David Levy or Fotis Georgiadis was
2 aware of that would cause these swings. Again, I was told that
3 it's nothing that they are doing.

4 Q. Who said there is nothing that they are doing? Do you
5 recall what David Levy said in sum or substance?

6 A. He said he's not selling and Fotis said he was not selling.

7 Q. When you saw the stock price go up in 2010, did it also go
8 back down?

9 A. It did.

10 Q. How long did it take to go up and go down? How many days
11 was that?

12 A. The actual cycle of going up and going down may have been a
13 little longer. I almost want to say it was more like a month
14 than a week, for example.

15 Q. I showed you and we went through a little bit Government
16 Exhibit 201-41, which were all the press releases you issued
17 when you were at Cardiac Networks, right?

18 A. Yes.

19 Q. Other than the press releases, what other promotional
20 material did you issue on behalf of Cardiac Networks when you
21 were its CEO?

22 A. I did not issue any other materials.

23 Q. What familiarity do you have with websites about penny
24 stocks?

25 A. I don't.

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1 Q. What newsletters or email subscription services did you
2 subscribe to regarding penny stocks when you were at Cardiac
3 Networks?

4 A. There were none that I subscribed to.

5 Q. I'm going to ask you to look at Government Exhibit 102-6
6 through 102-23, which are all in evidence.

7 MS. COHEN: Mr. Dinet, if we could start with 102-6.

8 A. Yes.

9 Q. Mr. Swartzburg, do you recognize Government Exhibit 102-6?

10 A. No.

11 Q. You have never seen it before?

12 A. No.

13 Q. Do you know anything about Best Stock Report?

14 A. No.

15 Q. Can you look at Government Exhibit 102-7. Have you ever
16 seen Government Exhibit 102-7 before?

17 A. No.

18 Q. That's again a penny stock newsletter tracking from Best
19 Stock Report.

20 A. During the time I was at Cardiac, I've never seen this.

21 Q. Cardiac traded under the ticker symbol there CNWI, is that
22 right?

23 A. Correct.

24 Q. I ask you to look at Government Exhibit 102-8. Have you
25 ever seen Government Exhibit 102-8?

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1 A. No.

2 Q. This is dated September 4, 2009, right?

3 A. Yes.

4 Q. Do you see where it says, "CNWI could have its biggest day
5 ever tomorrow"?

6 A. Yes.

7 Q. Do you know what is being talked about in this newsletter?

8 A. No.

9 Q. I ask you to look at Government Exhibit 102-9. Have you
10 ever seen Government Exhibit 102-9 before?

11 A. No.

12 Q. This is dated September 8, 2009, is that right?

13 A. Yes.

14 Q. Talking about the special bonus pick-up week, talking about
15 CNWI, do you see that? Do you have any knowledge of that?

16 A. No.

17 Q. If you can please look at Government Exhibit 102-10.

18 A. Yes.

19 Q. Have you ever seen Government Exhibit 102-10 before?

20 A. No.

21 Q. Do you see it's talking about "Are you ready?" and it talks
22 about "CNWI is an extraordinary phenomenon. At this point the
23 gains are so huge and easy, there is to do is just to shrug
24 your shoulders and laugh." Any clue about what is going on,
25 being talked about in this newsletter?

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1 A. No.

2 Q. Look at government Exhibit 102-11.

3 A. Yes.

4 Q. It's dated September 13, 2009, titled "This newsletter is a
5 pick of the week. Do not miss out this time." It's talking
6 again about CNWI. Any knowledge about anything in this
7 newsletter Government Exhibit 102-11?

8 A. No.

9 Q. Look at Government Exhibit 102-12.

10 A. Yes.

11 Q. This is dated September 16, 2009. "Important update on
12 CNWI. Please read." It's talking about "CNWI launched off in
13 the morning is at a new high of 94 cents." Any idea what is
14 being talked about in this newsletter?

15 A. No.

16 Q. Look at Government Exhibit 102-13.

17 A. Yes.

18 Q. This is dated September 16, 2009. It talks about "CNWI
19 back on track." Any knowledge of this newsletter, Government
20 Exhibit 102-13?

21 A. No.

22 Q. Look at Government Exhibit 102-14. This is dated September
23 9, 2009. This is a Monster Penny Stock. Have you ever seen
24 this before?

25 A. No.

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1 Q. Do you know what is being talked about when they talk about
2 "CNWI is an extraordinary phenomenon" exclamation point?

3 A. No.

4 Q. Can you look at Government Exhibit 102-15.

5 A. Yes.

6 Q. This is another newsletter from MonsterPennyStocks.com.
7 Ever heard of MonsterPennyStocks.com?

8 A. No.

9 Q. This one is dated September 12, 2009. Again, it is with
10 CNWI being number 1, the pick of the week. Any knowledge about
11 Government Exhibit 102-15?

12 A. No.

13 Q. If you can look at Government Exhibit 102-16.

14 A. Yes.

15 Q. This is again from Monster Penny Stocks dated September 7,
16 2009. It's talking again about stock price of CNWI.

17 A. Yes.

18 Q. Any knowledge about Government Exhibit 102-16?

19 A. No.

20 Q. Did you ever authorize any of these emails and newsletters
21 we have been looking at?

22 A. No.

23 Q. Look at Government Exhibit 102-17, which is another Monster
24 Penny Stock newsletter dated September 11, 2009. It's talking
25 about "CNWI exploded right out of the gate this morning and

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1 reached as high as 73 cents." Do you have any knowledge of
2 what's written here in Government Exhibit 102-17?

3 A. No.

4 Q. Look at Government Exhibit 102-18, again from Monster Penny
5 Stock, dated September 2, 2009.

6 A. Yes.

7 Q. It talks about "The monster is out of its cage. CNWI has
8 tendencies to just burst huge on any given day, as you can tell
9 from looking at the chart's history." Do you have any
10 knowledge about anything in Government Exhibit 102-18?

11 A. No.

12 Q. Looking at Government Exhibit 102-19, which is another
13 email from Monster Penny Stocks, or newsletter, sorry, from
14 Monster Penny Stocks, dated September 11, 2009.

15 A. Yes.

16 Q. "Everyone needs to pay attention" exclamation point,
17 exclamation point. It's talking about CNWI had its best chart
18 in the whole market. Do you know anything about Government
19 Exhibit 102-19?

20 A. No.

21 Q. Looking at Government Exhibit 102-20, this is another
22 MonsterPennyStocks.com newsletter. This one is dated September
23 9, 2009. It's talking about CNWI and its diagnostic devices
24 and stock price. Any knowledge about Government Exhibit
25 102-20?

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1 A. No.

2 Q. Look at Government Exhibit 102-21, please.

3 A. Yes.

4 Q. This is another Monster Penny Stock newsletter dated
5 September 14, 2009. Have you ever seen this before?

6 A. No.

7 Q. It's talking about "CNWI launched off this morning and hit
8 a new high of 94 cents." Do you have any knowledge about
9 Government Exhibit 102-21?

10 A. No.

11 Q. Looking at Government Exhibit 102-22, which is a Monster
12 Penny Stock newsletter dated September 3, 2009, "CNWI was a
13 Monster as promised." Do you know anything about this
14 newsletter?

15 A. No.

16 Q. You didn't authorize any of these newsletters, did you,
17 from Monster Penny Stocks?

18 A. No.

19 Q. Looking at Government Exhibit 102-23, this is again Monster
20 Penny Stock and it's dated September 9, 2009. "CNWI is the
21 stock of steel." Do you know anything about Government Exhibit
22 102-23?

23 A. No.

24 Q. Now I'm going to have you look at another exhibit. We will
25 move it into evidence subject to connection later, but we are

D3crlev1

Swartzburg - direct

1 allowed to publish it per our discussion with defense counsel.

2 MS. COHEN: There is going to be a stipulation about
3 it later, your Honor.

4 MR. SHARGEL: What number is that?

5 MS. COHEN: 605-7. Pursuant to the stipulation the
6 government will read in evidence, Government Exhibit 605-7 was
7 issued from best damn penny stocks email address.

8 Q. Do you know what Best Damn Penny Stocks is?

9 A. No.

10 Q. Ever heard of it before?

11 A. No.

12 Q. If you look through these emails from Best Damn Penny
13 Stocks, actually, if you look at the second one, for example,
14 which shows that it was sent on September 2, 2009, from
15 BestDamnPennyStocks.com, it talks about CNWI. Do you have any
16 knowledge about anything in this email signed Sincerely, staff
17 at BestDamnPennyStocks.com"?

18 A. No.

19 Q. Did you ever authorize any emails to be sent out from Best
20 Damn Penny Stocks about CNWI while you were its CEO?

21 A. No.

22 Q. If you can turn to the next page. Look at the top. It's
23 another email sent on September 2, 2009, about CNWI.

24 A. Yes.

25 Q. Actually, if you go through this whole exhibit, have you

D3crlev1

Swartzburg - direct

1 ever seen any of these emails from Best Damn Penny Stocks about
2 CNWI, which were all sent out in 2009?

3 A. No.

4 Q. If you can look at what's been marked for identification as
5 Government Exhibit 605-6A, which again is subject to a
6 stipulation we will read into evidence and then move it in at
7 that time. Pursuant to the stipulation, these are emails sent
8 in something called Monster Stock. Have you ever heard of
9 Monster Stock.com?

10 A. No.

11 Q. Did you ever authorize any emails to be sent out from
12 MonsterStock.com?

13 A. No.

14 Q. I'm sorry. Monster Penny Stock.

15 A. No.

16 Q. Let me start again. Do you know what Monster Penny Stock
17 is?

18 A. No.

19 Q. Did you ever authorize any emails from Monster Penny Stock
20 regarding anyone at Cardiac Networks while you were its CEO?

21 A. No.

22 Q. Again, if you look through all of these emails which are
23 marked Government Exhibit 605-3, they are sent out in September
24 of 2009.

25 MR. SHARGEL: Could we could the exhibit number again?

D3crlev1

Swartzburg - direct

1 Q. I'm sorry. 605-6A. If you look at all these emails that
2 are printed out and marked for identification as Government
3 Exhibit 605-6A, they are all from an email address staff at
4 MonsterPennyStock.com. Do you have any knowledge of any of
5 these emails?

6 A. No.

7 Q. Did you ever authorize any of these emails to be sent out?

8 A. No.

9 Q. Do you have any idea who the emails were sent to?

10 A. No.

11 Q. Do you have any idea who was responsible for sending the
12 emails?

13 A. No.

14 Q. If you can now turn in your binder to Government Exhibit
15 102-24. These are in evidence. Now we are in the 2010 time
16 period. If you can look at the first document, Government
17 Exhibit 102-24, which is a newsletter from something called
18 Penny Stock Picks. "CNWI could have you proposing by the end
19 of the week."

20 If you turn the page to the second page, it talks
21 about Cardiac Network. "You may very well asked for CNWI's
22 hand in marriage over the next few days." It talks about "Time
23 to do own due diligence on CNWI for tomorrow's trading day."
24 Do you have any knowledge of the any of the content here in
25 Government Exhibit 102-24?

D3crlev1

Swartzburg - direct

1 A. No.

2 Q. Did you ever authorize any information to be put up on
3 Penny Stock Picks about CNWI?

4 A. No.

5 Q. If you can look at what is in evidence as Government
6 Exhibit 102-25. This is again Penny Stock Picks. This goes
7 back to 2009, September.

8 A. Yes.

9 Q. If you go to the second page, it talks about
10 "congratulating the savvy investors that took part in the CNWI,
11 a monstrous 200-plus win." Do you have any knowledge about
12 Government Exhibit 102-25?

13 A. No.

14 Q. Did you authorize or ask Penny Stock Picks to put any
15 information up about CNWI?

16 A. No.

17 Q. Look at Government Exhibit 102-26. Now we are in February
18 2010 again, and this is Penny Stock Legend. You don't know
19 what Penny Stock Legend is, do you?

20 A. No.

21 Q. Again it's talking about CNWI and about "My new huge pick
22 is Cardiac Network, Inc." Do you have any knowledge about
23 Government Exhibit 102-26?

24 A. No.

25 MS. COHEN: A moment to confer, your Honor?

D3crlev1

Swartzburg - direct

1 THE COURT: Yes.

2 Q. Before we looked at these various newsletters and emails,
3 you talked about when you were looking for investors in 2009.
4 You also, I think, spoke earlier about there was some
5 volatility in the stock price of Cardiac Network when you first
6 came in.

7 A. Yes.

8 Q. What effect did the volatility in the stock price have on
9 your ability to find new investors for Cardiac Networks?

10 A. The volatility, which really represents stock not just
11 going up but going up and down, does scare away investors
12 because it creates a little uncertainty in whether or not their
13 investment is going to have a nice steady increase versus
14 whether it could go up or down at any given time.

15 Q. You said you had some shares in Cardiac Network when you
16 left?

17 A. Yes.

18 Q. What happened to your shares in Cardiac Network?

19 A. I still have my shares.

20 MS. COHEN: One moment, your Honor?

21 THE COURT: Yes.

22 Q. You still have your shares in Cardiac Network, you just
23 said?

24 A. Yes.

25 Q. What is the value of those shares?

D3crlev1

Swartzburg - direct

1 A. Zero.

2 MS. COHEN: No further questions.

3 THE COURT: Mr. Shargel.

4 MR. SHARGEL: Yes, thank you, Judge.

5 CROSS-EXAMINATION

6 BY MR. SHARGEL:

7 Q. We have been spending the last, I don't know, 15 minutes
8 going through each one of these exhibits and you were asked
9 questions about each one of the exhibits. Obviously, you
10 remember that, right?

11 A. Yes.

12 Q. The common question that was asked again and again was did
13 you have any knowledge or did you authorize those reports to
14 issue information about Cardiac Network, correct?

15 A. Correct.

16 Q. You said you had no knowledge of it, right?

17 A. True.

18 Q. You are familiar with industry analysts, right? You have
19 heard about stock analysts, correct?

20 A. Yes.

21 Q. A stock analyst sometimes specializes in the study of
22 various industries, right?

23 A. Yes.

24 Q. You knew that there was competition out there in the heart
25 monitoring world, if I may say that, correct?

D3crlev1

Swartzburg - cross

1 A. Yes.

2 Q. You spoke a few minutes ago about new technology, right?

3 A. Yes.

4 Q. That was not some state secret. People were looking at a
5 new technology, right?

6 A. Yes.

7 Q. Mr. Swartzburg, do you know of any requirement that an
8 analyst must tell you or get your permission to recommend a
9 stock?

10 A. No.

11 Q. If there is a newspaper article about a new technology and
12 a company that is the subject of the article, is the newspaper
13 writer supposed to get your authorization before he writes the
14 story?

15 A. No.

16 Q. Does the newspaper writing supposed to get your permission
17 before he writes the story?

18 A. No.

19 Q. What about a company like Merrill Lynch? They recommend
20 stock, right?

21 A. Yes.

22 Q. If Merrill Lynch were to recommend stock, do they need to
23 get your permission?

24 A. No.

25 Q. Do they have to make certain that you as the CEO of the

D3crlev1

Swartzburg - cross

1 company have knowledge of the recommendations they are making?

2 A. No.

3 Q. In other words, people who are in the business of
4 recommending stocks are free to recommend stocks without your
5 knowledge or participation, right?

6 A. Right.

7 Q. I'd like to go actually back to another subject, if I may.
8 The government had in evidence yesterday afternoon
9 Exhibit 201-40, and this morning again. Do you want to take a
10 look at that in your binder. 201-40.

11 A. Yes.

12 Q. I'm going to show you what's been marked for identification
13 as Defense Exhibit A128.

14 MR. SHARGEL: May I, Judge?

15 THE COURT: Yes, you may.

16 Q. I'm going to ask you to look in this situation at every
17 page. I'm going to ask you if you recognize the document.
18 It's the same document as the government exhibit, correct?

19 A. Yes.

20 Q. The government went over this. This was your plans, plans
21 that you had. If you could refer to the document in evidence,
22 the government's version, this was the plan that you had to try
23 to revive the company, to revive its health, right?

24 A. Yes.

25 Q. One of the principal ideas that you had was a share

D3crlev1

Swartzburg - cross

1 reduction program, right?

2 A. Yes.

3 Q. In other words, instead of owning 2 shares of stock, making
4 it as simple as possible, with the reduction program it would
5 be 1 share of stock, right?

6 A. Yes.

7 Q. This would increase the price and make it a more attractive
8 investment perhaps, right?

9 A. Yes.

10 Q. That's one of the things you were striving for, right?

11 A. Yes.

12 Q. There were also plans to have a lockup of certain stock,
13 right?

14 A. There was what I will call a gentleperson's understanding
15 that the people participating in this would as part of the
16 share reduction also refrain from trading.

17 Q. The participants were the investors and the major
18 shareholders, right?

19 A. Yes.

20 Q. Those are the people whose gentle cooperation, if I may use
21 that, the gentle cooperation you were seeking and obtaining,
22 right?

23 A. Yes.

24 MR. SHARGEL: If I may approach?

25 Q. On Defense Exhibit 128 you know what it means to sign in

D3crlev1

Swartzburg - cross

1 parts, right?

2 A. Yes.

3 Q. Signing in parts means, does it not, that everyone doesn't
4 have to get together, all the gentlepeople don't have to get
5 together at the same time to sign the document, correct?

6 A. Correct.

7 Q. They can send in a signature page with just their signature
8 and it's appended to the document, right?

9 A. Right.

10 Q. Back to 128. I ask if you recognize this. I'm going to
11 direct your attention to the last page. I ask you if you
12 recognize that as part of that document.

13 A. Yes.

14 MR. SHARGEL: I offer Defense Exhibit A128 in
15 evidence.

16 THE COURT: It's already in evidence. I thought you
17 said it is admitted, A128.

18 MS. COHEN: Your Honor, if I could understand what the
19 difference is?

20 MR. SHARGEL: The difference is that Mr. Levy's
21 signature, I don't think we saw Mr. Levy's signature on this
22 document before I introduced.

23 THE COURT: That is the difference between the two?

24 MR. SHARGEL: That's the difference.

25 THE COURT: OK. A128 is received in evidence.

D3crlev1

Swartzburg - cross

1 (Defendant's Exhibit A128 received in evidence)

2 MR. SHARGEL: Thank you. May we have it. May we go
3 to the last page of that, right there. And could you highlight
4 the signature on the right.

5 Q. Do you recognize the signature, sir?

6 A. Yes.

7 Q. Whose signature do you recognize it to be?

8 A. David Levy.

9 Q. This is on behalf of Date Palm Capital, his company, right?

10 A. Yes.

11 Q. "Shareholder" means shareholder in Cardiac Network, right?

12 A. Yes.

13 Q. The date is 10-12-08, right?

14 A. Yes.

15 MR. SHARGEL: May I retrieve it, your Honor?

16 THE COURT: Yes.

17 Q. In other words, Mr. Levy agreed to this share reduction
18 program, right?

19 A. Yes.

20 Q. He agreed that he would take this step along with other
21 shareholders to try to help this company succeed, right?

22 A. Yes.

23 Q. Because that was the objective, to make what you thought
24 was a good idea, right?

25 A. Yes.

D3crlev1

Swartzburg - cross

1 Q. You believed in the product, right?

2 A. Yes.

3 Q. You have long business experience, right?

4 A. Yes.

5 Q. You have an exquisite résumé of various companies that you
6 worked for and executive positions you held at those companies,
7 right?

8 A. Thank you, yes.

9 Q. A résumé you can be proud of, right?

10 A. Yes.

11 Q. This was one of your ideas because you believed in the
12 product, the heart monitor that was I guess the capstone of
13 this entire investment, right?

14 A. Yes.

15 MR. SHARGEL: We can use this A128 in evidence.
16 Jennifer, if we could have the first page.

17 MS. COHEN: Your Honor, if I can clarify that.
18 Government Exhibit 201-40 on the last page is exactly the same
19 and has the same signature.

20 MR. SHARGEL: Maybe there was something wrong with my
21 copy.

22 THE COURT: If it's the same, it's the same.

23 Q. No question about the fact that, whichever copy you're
24 looking at, Mr. Levy's signature is on the copy, right?

25 A. Yes.

D3crlev1

Swartzburg - cross

1 Q. Because you have an independent recollection that Mr. Levy
2 had agreed to this, right?

3 A. Yes.

4 Q. Another step that you were taking, if we could go down the
5 page to item 1 and if we could highlight item 1, another
6 important step to try to get the company, to use your words
7 that you attribute to Mr. Levy, back on its feet or on its feet
8 was that 12 million shares, I'll read the whole thing, "the
9 surrendering of 12 million shares issued as part of a recently
10 voided transaction." Do you see that?

11 A. Yes.

12 Q. What they are talking about, what you are talking about in
13 this agreement is the situation that you have at American
14 Marketing, right?

15 A. Yes.

16 Q. The man who was involved with American Marketing, that you
17 identified as being American Marketing, was a man named Norman
18 King, right?

19 A. Yes.

20 Q. This occurred during the stewardship of Mr. Helfer, right?

21 A. Yes.

22 Q. When Mr. Helfer was the CEO?

23 A. Yes.

24 Q. Voiding the 12 million shares, surrendering those
25 12 million shares and rendering them void, in other words, like

D3crlev1

Swartzburg - cross

1 they didn't exist, right, was an important part of your plan as
2 well, right?

3 A. Yes.

4 Q. To have the company regain its financial health?

5 A. Yes.

6 Q. Mend its financial fences, right?

7 A. Yes.

8 Q. Now I'm going to show you what's been marked for
9 identification as Defendant's Exhibit A121-A. I put that
10 before you and ask if you recognize it. The agreement, by the
11 way, that we just saw on the screen, I'll refer to A128, the
12 government version as well, that was dated in October of 2008,
13 correct?

14 A. Yes.

15 Q. I ask you if you recognize this document that I just put in
16 front of you.

17 A. Yes.

18 Q. What do you recognize it to be?

19 A. This was my initial assessment of what I believed could be
20 done with the company.

21 Q. Was that a PowerPoint presentation?

22 A. Yes.

23 MR. SHARGEL: I offer it into evidence, your Honor.

24 MS. COHEN: No objection.

25 THE COURT: A121-A is in evidence.

D3crlev1

Swartzburg - cross

1 (Defendant's Exhibit A121-A received in evidence)

2 Q. The first page, Cardiac Network, Inc., this is your work,
3 correct?

4 A. Yes.

5 Q. Shareholder proxy and company turn-around, right?

6 A. Yes.

7 Q. That is exactly what you wanted to do, you wanted to turn
8 around the company and make it profitable, right?

9 A. Yes.

10 Q. This is update August 19, 2008, do you see that?

11 A. Yes.

12 (Continued on next page)

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D3CLLEV2

Swartzburg - cross

1 MR. SHARGEL: Can we have the next page, please.

2 Could we have the first item in bullets.

3 Q. Now, one of the things that you wanted to do, and your
4 word, immediately, was transition of current CEO to temporary
5 advisory role. Right?

6 A. Correct.

7 Q. Essentially you were kind of gently pushing him out of the
8 company, right?

9 A. Yes.

10 Q. Because he wasn't a very good CEO at all, was he?

11 A. I didn't think so.

12 Q. You remember, I think you said on direct examination that
13 one of the first meetings that you had with Mr. Helfer when you
14 sat down with him assuming your new role as CEO was to discuss
15 the business plan?

16 A. Yes.

17 Q. And he had a one-page document?

18 A. Yes.

19 Q. You remember that it was a one-page document, right?

20 A. Maybe one and a half, but yes.

21 Q. In your experience, with your resume, you haven't seen too
22 many one page or one page and a half business plans, right?

23 A. Correct.

24 Q. That was pretty, if I may use the word, shallow, right?

25 A. Yes.

D3CLLEV2

Swartzburg - cross

1 Q. And you realized full well after those initial
2 conversations with him that this really wasn't helping the
3 company, he wasn't a guy who's really helping the company,
4 correct?

5 A. I believe Zev Helfer had a good knowledge of the monitors
6 and the doctors but not the business.

7 Q. He wasn't a businessman?

8 A. Correct.

9 Q. Fair statement?

10 A. Fair statement.

11 Q. So the next, actually, the third bullet going down, again
12 showing that this was part of your plan for rehabilitation was
13 to pursue surrender of any unauthorized issuance of Cardiac
14 Network Inc. shares, i.e., 12 million shares to marketing
15 consultant. Right?

16 A. Yes.

17 Q. Now, I'd like to ask you, if I may.

18 MR. SHARGEL: May I have a moment, your Honor.

19 Q. I want to show you what's been marked for identification as
20 Defendant's Exhibit A211. Do you recognize that?

21 A. I recognize it.

22 Q. What do you recognize it to be?

23 A. This is a long time ago, but I recognize it as discussions
24 around these 12 million shares and how we're going to try and
25 get them back.

D3CLLEV2

Swartzburg - cross

1 Q. And this is a an email that's dated October 30, 2008,
2 correct?

3 A. That's an email from our attorney, counsel.

4 Q. Getting the shares back was an important objective, right?

5 A. Yes.

6 Q. And you knew and this exhibit that I put in front of you
7 was contemporaneous with what was occurring in connection with
8 the effort to get the 12 million shares back?

9 A. Yes.

10 MR. SHARGEL: I offer it into evidence.

11 MS. COHEN: No objection, your Honor.

12 THE COURT: A211 is in evidence.

13 (Defendant's Exhibit A211 received in evidence)

14 Q. Now, the issuance of the 12 million shares was really a
15 topic of consternation, if you will?

16 A. Yes.

17 Q. One of the issues was would an investor, would an investor
18 invest with regard to what happened with the 12 million shares,
19 right?

20 THE COURT: I don't understand the question.

21 MR. SHARGEL: I'm going to withdraw the question.

22 Q. Give me your words. What was the problem with the
23 12 million shares and the fact that they had been issued?

24 A. I had two problems with it. One, it just increases the
25 number of shares outstanding, which in this case I didn't feel

D3CLLEV2

Swartzburg - cross

1 was appropriate.

2 Q. And it dilutes the shares, right?

3 A. It dilutes the existing shareholders.

4 Q. What was the other problem with it?

5 A. The other problem was I didn't think that we received value
6 in exchange for those shares. So even if the dilution had come
7 with value, it may have been a different story.

8 Q. So when you say it didn't come with value, I want to drill
9 down on this a little further, if I may.

10 12 million shares were issued to American Marketing,
11 right?

12 A. Correct.

13 Q. And in return for 12 million shares, I think you said on
14 direct examination that they didn't receive anything really of
15 value, right?

16 A. Yes.

17 Q. But what they did receive was \$7.8 million worth of
18 advertising and media credits, right?

19 A. That's what the contract said, yes.

20 Q. Well, you smile. The idea of receiving \$7.8 million worth
21 of advertising and media credits to a company that had less
22 than a hundred thousand dollars in the bank didn't make a whole
23 lot of sense, right?

24 A. Right.

25 Q. And in fact it was valueless, right?

D3CLLEV2

Swartzburg - cross

1 A. I believe so.

2 Q. Even though it was a large sum of money by anyone's
3 standard, you couldn't pay salaries with it, right?

4 A. Right.

5 Q. You couldn't buy new heart monitors, could you?

6 A. No.

7 Q. You couldn't rent new office space, could you?

8 A. No.

9 Q. You couldn't increase the staff that would receive the
10 calls when someone was having a cardiac event, couldn't do
11 that, right?

12 A. Correct.

13 Q. In other words, it was worthless to the company?

14 A. I believe so.

15 Q. Now, there came a time -- and, by the way, could you define
16 for us, if you're able to, I'm sure you're able to, dilution of
17 the shares? I want to go back. What does that actually mean?

18 A. What that means, if a company is worth whatever value is
19 assigned to it, the more shares that are outstanding the more
20 each -- the less each individual share is worth.

21 Q. That's an adverse result, correct?

22 A. To each individual share.

23 Q. The shareholders would be losing out, right?

24 A. The ones that didn't get the diluted shares would be losing
25 out. The ones that got the extra shares would benefit.

D3CLLEV2

Swartzburg - cross

1 Q. Get an advantage that they're not entitled to; fair
2 statement?

3 A. Yes.

4 Q. So did there come a time when there was a -- by the way,
5 there was actually one more thing that I'd like to call to your
6 attention in connection with Defendant's Exhibit A11 now in
7 evidence. Could we have that up. A211, I'm sorry.

8 Now, this was an email authored by you?

9 A. Yes.

10 MR. SHARGEL: Could we sharpen the focus and come
11 closer.

12 Q. This was -- stop right there, please -- this was from you
13 to the Georgiadis Group and Mr. Levy, right, Mrs. Levy, Judy
14 Crowhurst.

15 Judy Crowhurst introduced you to Mr. Levy, didn't she?

16 A. Yes.

17 Q. And she was a head hunter of sorts?

18 A. Yeah, I guess. She was a lot of different functions, I
19 suppose.

20 Q. She's the one that came to you, it wasn't Mr. Levy, she's
21 the one that came to you and said, she made no --

22 A. A networking person.

23 Q. She was a networking person?

24 A. Yes.

25 Q. You're not one of those guys on LinkedIn, are you?

D3CLLEV2

Swartzburg - cross

1 MS. COHEN: Objection.

2 MR. SHARGEL: Withdrawn.

3 Q. So you're saying that I just don't feel right calling
4 public attention to a bad transaction that all have agreed
5 should be voided. How could we possibly justify to the public
6 the issuance (and related dilution) of 12 million shares as
7 zero? Would the people that have purchased shares in the last
8 two months decided differently if they know about the
9 12 million shares? Fortunately, I don't think we need to go
10 there. I am comfortable disregarding the 12 million shares
11 based on the representations and agreements made by Norman and
12 the unauthorized nature of the deal.

13 In other words, this was a topic that was making you
14 feel, as CEO, uncomfortable, right?

15 A. Yes.

16 Q. And how it would look for the company out in the market,
17 right?

18 A. Yes.

19 Q. OK. Do you remember there coming a time when Norman King
20 and you said -- I don't remember the exact words, but on direct
21 examination you said that, what, dishonest man; is that an
22 overstatement?

23 A. Yes, I'm sorry. What was the question again?

24 Q. Was he a dishonest man?

25 A. I believed he was dishonest with the company.

D3CLLEV2

Swartzburg - cross

1 Q. That's what you were concerned with, the company, right?

2 A. Correct.

3 Q. Did there come a time when Norman King and American
4 Marketing brought a lawsuit?

5 A. Yes.

6 Q. And you had voided the 12 million shares, right?

7 A. For purposes of the company and what I was representing, I
8 voided the transaction, did not accept those media credits, and
9 then attempted to get back the certificate.

10 Q. And you wanted to be done with Norman King, right?

11 A. Correct.

12 Q. And Norman King had the temerity, the nerve, to bring a
13 lawsuit to retain the 12 million shares, right?

14 A. He brought a lawsuit not to retain the 12 million shares,
15 but he did bring a lawsuit.

16 Q. What was the, if you can give us just a short description,
17 what was the nature of the lawsuit?

18 A. He felt that he was not able to get his restrictions
19 removed so that he could sell those 12 million shares in the
20 open market.

21 Q. In other words, not only did he want to keep the 12 million
22 shares, he wanted to get them unrestricted so he could go out
23 and sell in the market?

24 A. True.

25 Q. So he could make a profit when he hadn't invested a

D3CLLEV2

Swartzburg - cross

1 quarter?

2 MS. COHEN: Objection, your Honor.

3 THE COURT: Overruled.

4 Q. Right?

5 A. Yes.

6 Q. Because the 7.8 million was like a fantasy, right?

7 MS. COHEN: Objection, your Honor.

8 THE COURT: Overruled.

9 A. I believed it had no value.

10 Q. Do you remember, sir, that the lawyer asking -- the lawyer
11 who was representing the company in connection with the lawsuit
12 asking you to help with the defense of the lawsuit?

13 A. Yes.

14 Q. And do you remember actually sitting down and crafting an
15 answer to the lawsuit?

16 A. Yes.

17 Q. And not only an answer, but counterclaims against Mr. King?

18 A. Yes.

19 Q. And counterclaims against Mr. Helfer too, right?

20 A. In the context of a lawsuit, yes.

21 Q. Let me, well, that invites, that begs a question. Let me
22 ask it from here.

23 Well, when you were helping in connection with
24 preparing the defense, you were being honest, weren't you?

25 A. Yes.

D3CLLEV2

Swartzburg - cross

1 Q. You were being truthful, right?

2 A. Yes.

3 Q. You wouldn't deliberately tell a lie either to the lawyer
4 or incorporate a lie into the answer, right?

5 A. No.

6 Q. Let me show you what's been marked for identification as
7 Defendant's Exhibit A57, and I ask if you recognize that and
8 the document that's underneath.

9 A. Yes.

10 Q. What do you recognize it to be?

11 A. It was sharing the proposed, because I understand it never
12 actually got filed, but the proposed countersuit.

13 Q. And the proposed countersuit is something that you worked
14 on along with the lawyer, right?

15 A. With the lawyer, yes.

16 Q. And supplied the facts to the lawyer, right?

17 A. Yes.

18 Q. And then you sent it on through that email to David Levy,
19 right?

20 A. Yes.

21 MR. SHARGEL: I offer it in evidence. Remind me of
22 that number please, A57. I offer A57 into evidence.

23 MS. COHEN: No objection, your Honor.

24 THE COURT: A57 is received in evidence.

25 (Defendant's Exhibit A57 received in evidence)

D3CLLEV2

Swartzburg - cross

1 MR. SHARGEL: First page, could you zoom in on that.

2 Q. To David Levy from you, Mr. Swartzburg?

3 A. Yes.

4 Q. And, Hi, David. This is in March of 2011. Hi, David.

5 Attached is the original -- it's email mistakes. You meant to
6 say complaint, right?

7 A. Yes.

8 Q. Not compliant. OK. So previously provided and the
9 countersuit we will file. If there is anything you would like
10 to see included, please let me know.

11 So could we -- and then you actually had the answer
12 and the counterclaims, right?

13 A. Yes.

14 MR. SHARGEL: Now, let me have page 3, if I may.

15 Page 3 of the counterclaims, paragraph 14. Could you zoom in
16 on paragraph 14, please.

17 Q. "In response to the allegations contained in paragraph 14,
18 defendants admit the terms of the June 25, 2008 agreement as
19 the same are contained therein."

20 The agreement was you had to agree that there was such
21 an agreement because Zev Helfer signed it, right?

22 A. Yes.

23 Q. However, defendants deny the remaining allegations, and
24 then there's some lawyer talk. Let's get to this sentence
25 starting with "this conspiracy."

D3CLLEV2

Swartzburg - cross

1 "Plaintiff's principal, Norman King," meaning the
2 plaintiff was American Marketing, right?

3 A. Yes.

4 Q. "And the then chief executive officer of Cardiac Network
5 Inc., Zev Helfer, acting in collusion" -- you know what that
6 word means, together, right?

7 A. Yes.

8 Q. "In collusion as part of a scheme to defraud others,
9 including defendants, and to pump up Cardiac Network's balance
10 sheet by adding 7.8 million phantom value in an attempt to make
11 the company more attractive to investors, obtain loans and
12 realize gains for both Mr. Helfer and Mr. King by means of the
13 scheme described hereafter. At the time Cardiac Network had
14 less than \$100,000 in cash and less than 500,000 in total
15 assets."

16 These are words that you helped author, correct?

17 A. I helped author that, yes. It was, again, I can only say
18 that in the context of preparing the lawsuit, I was not the
19 only person who had input into this paragraph. But as part of
20 the defense team, I helped craft this paragraph.

21 Q. "If recorded, the 7.8 million would have represented an
22 increase over 1500 percent in the total assets of the company.
23 Mr. Helfer then caused to be issued 12 million shares to Norman
24 King without approval of the board of directors or
25 authorization of Cardiac Network and with no intention or

D3CLLEV2

Swartzburg - cross

1 belief by Mr. Helfer or Mr. King that Cardiac Network would
2 ever receive 7.8" -- next page, please.

3 Actually, next page. I don't want to read the whole
4 thing, but let me ask you about some of the highlights. "At
5 best, the cash equivalent credits may act as a coupon in
6 combination with cash."

7 In other words, this deal that Mr. Helfer made, not
8 only couldn't you spend the 7.8 million on anything other than
9 advertising credits, but you'd have to give American Marketing
10 even more cash or more money, right?

11 A. Yes.

12 Q. So it was an awful deal, wasn't it?

13 A. Correct.

14 Q. "But they were worthless to a company with less than
15 \$100,000 in the bank, a fact known to both Mr. Helfer and King.
16 The fraudulent and improper issuance of the 12 million shares
17 was at the expense of the then existing shareholders."

18 You said Mr. Levy brought this to your attention and
19 said we got to undo this transaction. Right?

20 A. Yes.

21 MR. SHARGEL: Let me go down to the bottom of this
22 paragraph, just raise it a little. Still at the end of
23 paragraph 14. I'm going to go down further.

24 Q. "When this scheme was discovered, Mr. Helfer was removed
25 from" -- sorry -- "removed from office in August 2008 through a

D3CLLEV2

Swartzburg - cross

1 vote and consent of the majority shareholders. As a result of
2 the discovery of this scheme and conspiracy to defraud,
3 plaintiff was contacted by defendants and agreed to cancel and
4 void the June 25, 2008 agreement."

5 Mr. Helfer wasn't kicked out of the company because he
6 didn't like press releases, that wasn't the reason, right?

7 A. Correct.

8 Q. This was the reason, wasn't it?

9 A. This is the reason that's quoted in the lawsuit. I had
10 other reasons as well.

11 Q. In addition to this?

12 A. In addition to this.

13 Q. I'm not even going to ask.

14 Let me ask you a question. Would you have invested,
15 based -- how old are you, by the way?

16 A. Forty-five.

17 Q. And based on your long years at least 20 years of business
18 experience, would you have invested five or ten or \$20 million
19 in a business with Mr. Helfer at the helm?

20 MS. COHEN: Objection, your Honor.

21 THE COURT: Sustained.

22 Q. By the way, speaking of Cardiac Network, you had a
23 confidential private placement memorandum prepared, didn't you?

24 A. Yes.

25 Q. And you made, as common, projections as to the future of

D3CLLEV2

Swartzburg - cross

1 the company, right?

2 A. Say that one more time? I'm sorry.

3 Q. Yes. You were seeking investors all along, right?

4 A. Yes.

5 Q. And every time you would meet with investors, I don't think
6 you used these words, but it was kind of like a dog and pony
7 show. You had to tell about the company, show the monitor,
8 talk about projections, right? I don't mean to denigrate it by
9 dog and pony show. You had to come out and try to persuade the
10 investors that this was a good investment. Right?

11 A. I don't believe I gave projections, but I certainly talked
12 about the business.

13 Q. Well, let me show you what's been marked as Defendant's
14 Exhibit 121, A121B, and I ask if you recognize this?

15 A. Yes.

16 Q. What do you recognize it to be?

17 A. It is a confidential private placement memorandum.

18 Q. Can you explain to the jury and to me what that means?

19 A. So in order to go out and find investors, what you want to
20 do is give the investors an executive summary, summary of the
21 risk factors associated with investing, give them an accredited
22 questionnaire to make sure they have the financial wherewithal
23 to be able to invest in a risky company. It's basically a
24 document to go out and find money.

25 Q. The document that I've asked you to identify that's in

D3CLLEV2

Swartzburg - cross

1 front of you, you recognize that, right?

2 A. Yes.

3 Q. And were you one of the authors if not the principal
4 author?

5 A. Yes.

6 Q. And you see that -- first I have to offer it into evidence.

7 MR. SHARGEL: I offer --

8 THE COURT: Mr. Shargel, you asked one of the authors
9 or principal author. He said yes. Which one was he?

10 Q. Which one were you?

11 A. I am one of the authors. But, again, I'm the main person
12 who helped write it.

13 MR. SHARGEL: May I offer it in evidence?

14 THE COURT: A121B. Have you seen it, Ms. Cohen?

15 MS. COHEN: I think I'm looking at a different one.

16 No objection, your Honor.

17 THE COURT: A121B is in evidence.

18 (Defendant's Exhibit A121B received in evidence)

19 Q. When you say -- and I'm not quarreling with you -- when you
20 say you were one of the authors, who else at Cardiac at this
21 time, at the time this was created, I don't see a date on it,
22 but at the time this was created, who else was doing something
23 like this?

24 A. This would had to have been circulated and authorized by
25 the board of directors.

D3CLLEV2

Swartzburg - cross

1 Q. So the board of directors would look at it, but you were
2 the person who actually authored or penned the document, right?

3 A. Again, I took input from existing materials, from counsel
4 that we had working with me. But, yes, I like to think I
5 drafted most of it.

6 Q. Fair enough. Now, I'd show you what's been --

7 MR. SHARGEL: Is this up? OK. Can we go to page 11,
8 please. And could we go to that in the first bullets, the
9 second of the three bullets. Not those bullets. Right there.

10 Q. That was a projection, wasn't it, that you see up on the
11 screen?

12 A. To me a projection is something you could -- this is part
13 of a plan. I guess I'm confused because usually when I think
14 of projections, I think you put in a little more certainty.
15 And I certainly don't think that's a certainty statement.
16 That's just, that, to me, is aspirational.

17 Q. Fair enough. But you felt comfortable -- and, again, I'm
18 not quarreling with this -- putting your aspirations in this
19 important document, right?

20 A. Yes.

21 Q. You knew that investors would be, potential investors would
22 be relying on the document, right?

23 A. Yes.

24 Q. You expected that potential investors would, among other
25 steps toward due diligence, would read every page of this,

D3CLLEV2

Swartzburg - cross

1 that's what your expectation was, right?

2 A. Yes.

3 Q. Now, you didn't think you were doing anything wrong when
4 you said three-year plan is to grow annual revenues to over
5 120 million, you didn't think you were doing anything wrong,
6 did you?

7 A. No.

8 Q. You didn't think you were out to fool the public, did you?

9 A. No.

10 Q. You didn't think you were going to take money from people
11 by fraud and deception or anything like that?

12 A. No.

13 Q. Now, you made an investor presentation with other documents
14 on September 17, 2008; do you remember that? You can take that
15 one down.

16 A. On that one there's a context there.

17 MR. SHARGEL: Put it back up.

18 Q. Tell me the context.

19 A. Again, there's a second bullet point that says this will
20 only be accomplished if certain things happen such as capturing
21 a certain percentage of the market affected by this disease.
22 It doesn't say we're going to do it. It says this is a plan
23 and in order to do that, you first have to capture some market
24 share.

25 Q. That's a perfectly fair and honest statement to make to an

D3CLLEV2

Swartzburg - cross

1 investor, right?

2 A. OK.

3 Q. In other words, if things fell right -- and maybe that's
4 too loose. If things worked out the way you wanted them to
5 work out from the time you joined the company, you could reach
6 a goal of \$120 million a year, right --

7 A. Yes.

8 Q. -- is that a fair statement, yes.

9 Let me show you what's been marked as Defendant's
10 Exhibit A126.

11 THE COURT: What is it?

12 Q. A126. Do you recognize the document?

13 A. Yes.

14 Q. What do you recognize it to be?

15 A. It's an investor presentation dated September 17, 2008.

16 Q. And were you one of the if not the principal author?

17 A. Yes.

18 MR. SHARGEL: I offer it into evidence.

19 MS. COHEN: No objection, your Honor.

20 THE COURT: A126 is in evidence.

21 (Defendant's Exhibit A126 received in evidence)

22 MR. SHARGEL: May we have it up on the screen?

23 THE COURT: Yes, you may.

24 MR. SHARGEL: Page, this is page, Bates No. is 54561.
25 Exactly. So if you would highlight the penultimate bullet,

D3CLLEV2

Swartzburg - cross

1 next to last.

2 Q. "Upon receipt of venture funding proceeds, the plan is to
3 grow total annual revenues to over \$140 million by year three."

4 Right?

5 A. Yes.

6 Q. Same situation, if things broke right and all your, you
7 know, fence mending worked, you could, the company could have
8 that potential, right?

9 A. We were -- I believed if we were funded with venture funds
10 and all the other things you said, correct.

11 Q. So, again, you weren't out to fool anybody, right?

12 A. No.

13 Q. These were honestly held beliefs, right?

14 A. Yes.

15 Q. The language may not have been as colorful as in the
16 exhibits that the government put up, you know, when asked if
17 you saw this or you saw that, but that was your goal and
18 objective, right?

19 A. Yes.

20 Q. Let me show you on December 31, 2008, I'll put before you
21 Defendant's Exhibit A212 and ask you if you recognize this
22 document.

23 MR. SHARGEL: And I think this will be the last in
24 this series.

25 THE COURT: We'll take our morning recess then after

D3CLLEV2

Swartzburg - cross

1 that, Mr. Shargel.

2 MR. SHARGEL: Very well. I'll do this in less than
3 five minutes.

4 A. This looks like an internally developed business plan.

5 Q. Internally developed?

6 A. Yes.

7 Q. What does that mean as opposed to when you developed it?

8 A. I mean the purpose of this is for management, me, to have
9 some kind of a business plan to execute.

10 Q. This is the kind of thing you would have expected Zev
11 Helfer to show you, right?

12 A. Yes.

13 Q. And he didn't, right?

14 A. No.

15 Q. And your business plan, this business plan, internal, goes
16 to the board of directors, right?

17 A. Yes.

18 Q. And goes to major investors, right?

19 A. I don't remember if I sent it out to investors.

20 Q. At least the board of directors, right?

21 A. Certainly the board of directors.

22 Q. And there was some investors that were on the board of
23 directors as well, right?

24 A. True.

25 Q. And we see Section 3, where it says Section 3 -- I didn't

D3CLLEV2

Swartzburg - cross

1 offer it.

2 MR. SHARGEL: I offer A212 in evidence, Judge.

3 Do you want to do this after the break? Maybe I'm
4 going too fast.

5 MS. COHEN: No objection, your Honor.

6 (Defendant's Exhibit A212 received in evidence)

7 THE COURT: Why don't we try to finish.

8 MR. SHARGEL: Just one page on the Elmo.

9 Q. You're telling your board of directors, people on the
10 inside that the projections of revenue for year 2009,
11 28 million, and then 2010, 104 million, and then 2011,
12 165 million, and you go on the gross profit margins, how much
13 money the shareholders and everyone is going to realize as a
14 result of this kind of expectation.

15 You weren't trying to fool anyone, were you?

16 A. The context of this document is not for investors. The
17 context of this document is to have some kind of objectives to
18 be measured by internally in the company.

19 Q. What I'm asking you is this was honestly held beliefs on
20 your part, right?

21 A. Again, this is not a document to discuss my beliefs. This
22 is a document to present a business plan to management so that
23 we know what we're trying to accomplish.

24 Q. So what you were trying to accomplish was money in these
25 sums, right, that was your hope and expectation, right?

D3CLLEV2

Swartzburg - cross

1 A. With all the other things falling into place, including
2 venture funding, yes, this was the idea that we wanted to work
3 towards.

4 MR. SHARGEL: Very well. May we take the break?

5 THE COURT: Yes. Morning break, about ten, 15
6 minutes.

7 (Continued on next page)

D3CLLEV2

Swartzburg - cross

1 (Jury not present)

2 THE COURT: OK, Mr. Swartzburg. You can step down.

3 Don't talk to the government now. You're on cross-examination.

4 Mr. Shargel, did you want to say something?

5 MR. SHARGEL: I anticipated a question as to how much
6 longer I'd be, and I would say no longer than 15 minutes.

7 THE COURT: Mr. Srebnick.

8 MR. SREBNICK: I'll be less than 15 minutes as well.

9 THE COURT: OK. See you in about ten minutes. Thank
10 you.

11 (Recess)

12 THE COURT: Please be seated. Mr. Swartzburg will
13 come back. We'll get started.

14 (Continued on next page)

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D3CLLEV2

Swartzburg - cross

1 (Jury present)

2 THE COURT: Mr. Shargel.

3 MR. SHARGEL: Your Honor, I've looked at my notes and
4 I have no further questions.

5 THE COURT: OK. Mr. Srebnick.

6 Thank you, Mr. Shargel.

7 MR. SREBNICK: Thank you, Judge. May it please the
8 Court and good morning, everybody.

9 CROSS-EXAMINATION

10 BY MR. SREBNICK:

11 Q. Good morning, Mr. Swartzburg. My name is Howard Srebnick.
12 I have five or ten minutes of questions I'd like to go through
13 with you.

14 I'd like to start with publishing Government
15 Exhibit 102-3. And while they're putting that up on the
16 screen, what I'd like to do is go through some of the press
17 releases and perhaps all, if I have them organized correctly,
18 all of the press releases that you submitted to the wire, so to
19 speak, so that they would be published.

20 OK, do you know what I'm referring to?

21 A. Yes.

22 Q. OK. Let's take a look at Government Exhibit 102-3 and it's
23 already in evidence, I believe. If you could just take a look
24 at that and see if you remember having issued the press
25 release?

D3CLLEV2

Swartzburg - cross

1 A. Yes.

2 Q. OK. This is a press release dated September 8 of 2009.

3 And do you see that it reports that Cardiac Network (Pink
4 Sheets symbol) reported today that it had expanded the number
5 of sites included in its research study support with Southern
6 California Permanente Medical Group?

7 A. Yes.

8 Q. Could you tell the jury what is Southern California
9 Permanente Medical Group?

10 A. I believe it's part of Kaiser Permanente, which everybody
11 is most familiar with.

12 Q. For those of us that are not, could you tell us a little
13 bit about Kaiser Permanente?

14 THE COURT: We're in the east coast.

15 MR. SREBNICK: East coast/west coast.

16 A. Kaiser Permanente is primarily considered an HMO. It's a
17 healthcare provider that insures, that gives people medical
18 insurance, and they also have hospitals, I guess primarily on
19 the west coast, but they're a big healthcare provider. I
20 thought they're nationwide.

21 Q. How big is Kaiser Permanente, are we talking a hundred plus
22 million dollar company?

23 A. The Southern California Permanente group is a smaller
24 subset of what I believe is a larger organization that's
25 nationwide. I don't know the exact size.

D3CLLEV2

Swartzburg - cross

1 Q. It's an enormous company, right?

2 A. It's a big healthcare provider, yes.

3 Q. According to the press release, Cardiac Network has been
4 providing cardiac monitoring for patients in the study since
5 January 2008; do you see that?

6 A. Yes.

7 Q. And could you explain to the jury what this study was and
8 why this was an important event to Cardiac?

9 A. Cardiac Network was under contract to provide cardiac
10 monitoring services to patients as part of a research study
11 that Southern California Permanente Group was doing; but it
12 also presented a chance to present to the larger Kaiser group
13 an opportunity to monitor cardiac patients, again, as part of
14 this larger network.

15 Q. So was the idea that Cardiac Network by linking up with
16 this very large company, Kaiser Permanente, would give Cardiac
17 access to many, many more patients and, therefore, much more
18 revenues over time?

19 A. That was the idea, yes.

20 Q. I'd like to take a look now at Government Exhibit 102-4 and
21 have you take a look at that and see if you recognize it?

22 A. Yes.

23 Q. Is this one of the press releases that you authored and had
24 released on to the wire?

25 A. Yes.

D3CLLEV2

Swartzburg - cross

1 Q. September 10, 2009, Cardiac Network (Pink Sheets) reported
2 today that it is continuing the expansion of its technology
3 development initiatives for its products and services in
4 anticipation of servicing its agreement with American Wholesale
5 Health, or AWH, that was announced on June 22, 2009.

6 Do you see that?

7 A. Yes.

8 Q. Could you explain to the jury what this technology
9 development initiative was?

10 A. We had to create a software and expand the number of
11 Cardiac monitoring stations we had in place so that we could
12 basically monitor more patients around the clock in order to
13 service this initiative.

14 Q. The next sentence then indicates, The expanded platform
15 will allow AWH to market Cardiac Network's monitoring services
16 to its members nationwide under its umbrella of medical
17 services.

18 What does that mean?

19 A. What it means is they were going to take what our model
20 was, which was a subscription cardiac monitoring service
21 whereby people would sign up, they'd pay a monthly fee and have
22 access to our heart monitoring 24/7. What this means is that
23 this company would brand, take our monitoring, put their brand
24 on it and use it for their customers.

25 Q. Last paragraph: Under the terms of the agreement, AWH will

D3CLLEV2

Swartzburg - cross

1 bundle Cardiac Network's heart monitoring services with other
2 services offered as part of AWH memberships. The monitoring
3 program will generate revenues through product sales and
4 monthly billings to subscribers for its various monitoring
5 services.

6 Is that consistent with what you've been describing to
7 the jury?

8 A. Yes.

9 Q. I'd like to publish for the jury now Government
10 Exhibit 102-5. And when you see it on the screen, if you could
11 take a look at it and see if you remember this press release
12 that was issued?

13 A. Yes.

14 Q. OK. September 14, 2009, Cardiac Network (Pink Sheets)
15 reported today that it will be offering its current inventory
16 of monitors at or below cost to patients through its retail
17 networks as it makes preparations for its next generation of
18 Cardiac monitoring.

19 Could you explain to the jury what this initiative
20 was?

21 A. This I believe, as I remember, was part of this HeartOne
22 Club whereby we would offer some of our older monitors, instead
23 of renting them or leasing them, we would offer the people who
24 had signed up for this new program to actually buy the monitors
25 so that we can get new monitors in its place.

D3CLLEV2

Swartzburg - cross

1 Q. OK. Now, the HeartOne Club, I think, I don't think it will
2 be necessary to put it up on the screen, but that was one of
3 the potential sources of revenue for the company measuring in
4 tens of millions of dollars over time, according to some of the
5 aspirations?

6 A. Yes.

7 Q. I'd like to now publish Government Exhibit 102-1 -- only
8 got two more to go -- 102-1 and see if you can take a look at
9 that and tell us about that press release that you issued?

10 A. So this press release discusses a memorandum of
11 understanding which was signed with Pacific Innovations LLC,
12 and this is what I alluded to earlier, the new technology that
13 Cardiac Network invested in to hopefully get a new prototype
14 monitor.

15 Q. So Government Exhibit 102-1, you see it's dated February 4,
16 2010, Cardiac Network (Pink Sheets) announced today that it has
17 signed a memorandum of understanding with Pacific Innovations
18 LLC, a private technology development company, to complete the
19 development of a new technologically advanced cardiac
20 monitoring system exclusively for Cardiac Network.

21 Right?

22 A. Correct.

23 Q. Again, this was a development that was hopefully going to
24 provide revenue to the company over time, correct?

25 A. Yes.

D3CLLEV2

Swartzburg - cross

1 Q. Last exhibit, Government Exhibit 102-2. Do you recognize
2 this as one of your press releases?

3 A. Yes.

4 Q. Government Exhibit 102-2. February 9, 2010, Cardiac
5 Network (Pink Sheets) confirmed today that it has begun
6 executing the terms under a binding letter of intent signed
7 with Pacific Innovations, a private technology development
8 company. The letter of intent is for a worldwide license
9 agreement granting Cardiac Network an exclusive right to
10 license all intellectual property related to a new
11 technologically advanced Cardiac monitoring system.

12 Correct?

13 A. Correct.

14 Q. If you could just describe why this press release went out
15 and why it was an important development for Cardiac?

16 A. Under the second paragraph, it confirmed that we paid the
17 deposit towards that fee and that was the \$200,000 that came in
18 from the investor that we forwarded on to the -- to the
19 inventor.

20 Q. Now I'd like to ask you just generally then, now that we've
21 seen the press releases you issued, explain to the jury the
22 importance of press releases and why you felt these press
23 releases should go out to the public.

24 A. These press releases do two things: One, it lets the
25 public know what's going on with the company, especially when

D3CLLEV2

Swartzburg - cross

1 these type of events occur. The second thing it does is allows
2 me to openly discuss these press releases with either current
3 or potential investors without having them have information
4 that nobody else has.

5 Q. So on the one hand, it makes public that which would
6 otherwise be what they call inside information perhaps?

7 A. Yes.

8 Q. And No. 2 is it alerts the investing public as to what's
9 going on with this publicly traded company, correct?

10 A. Yes.

11 Q. It gives potential investors information that they may
12 choose to read in making a decision about whether they too
13 would like to become shareholders of Cardiac Network, correct?

14 A. Correct.

15 Q. Now, I'd like to ask you a few questions about the
16 promotions that I think the prosecutor asked you about, that
17 Mr. Shargel asked you about.

18 And without having to put them up on the screen, do
19 you recall that you were shown a series of reports that
20 Mr. Shargel asked you about, do you recall that the first set
21 of reports, I think it's Government Exhibit 102-6 through 23,
22 were all dated in September of 2009?

23 A. I believe so.

24 Q. Do you see that? I think the prosecutor took you one by
25 one and called out the dates.

D3CLLEV2

Swartzburg - cross

1 A. Yes. I remember there were 2009, and I think there were a
2 couple others at the end that may have been 2010.

3 Q. We'll get to those. In terms of the series 102-6 through
4 23 were newsletters -- we'll call them that -- newsletters from
5 September of 2009.

6 And if you could just take a look and if you need a
7 minute, I can put them on the screen, but --

8 A. I'm fine. Yes, September of 2009.

9 Q. Then I'd like you to take a look at Government Exhibits
10 102-24 and 102-26. Those were the newsletters, if you look at
11 the dates, I believe February 9 and February 10 -- excuse me, I
12 did say that right -- February 9 and February 10 of 2010.

13 MR. SREBNICK: Maybe we can put that on the screen, if
14 we could, 102-24 and 102-26, just for the dates.

15 Q. Do you see on the screen if we look to the left, on the
16 bottom left it says posted on February 9, 2010?

17 A. Yes.

18 (Continued on next page)

D3crlev3

Swartzburg - cross

1 Q. That's Government Exhibit 102-26. And if we look at
2 102-24 -- maybe I got them backwards here. 102-24, forgive me,
3 says 09 February 2010 on the left hand of the screen. Let's
4 see, do we have a date on 102-26? Can we go to 102-26. There
5 it is, top right of the screen. You have to scroll down right
6 at the top. Do you see that, 2010/2/10? I guess that would be
7 the European way of saying 2010 February 10. Do you see that?

8 A. Yes.

9 Q. So we have California, East Coast, and now Europe. We have
10 the dates now clear to us. There were a series of newsletters
11 in September of 2009 that were shown by the prosecutor and then
12 a couple in February of 2010. Do you see that?

13 A. Yes.

14 Q. Do you agree that these newsletters coincide with the press
15 releases that I just went through with you? There were several
16 press releases from September of 2009, right?

17 A. Yes.

18 Q. Then there was another couple of press releases from
19 February of 2010, right?

20 A. Yes.

21 Q. Were those the only press releases that you recall issuing
22 on behalf of the company?

23 A. No.

24 Q. There were more as well?

25 A. Yes.

D3crlev3

Swartzburg - cross

1 Q. Is it fair to say, though, that the newsletters that were
2 shown by the prosecutor do coincide with news being issued by
3 the company?

4 A. In the same month, yes.

5 Q. In fact, pretty much on the same days, correct?

6 A. I'd have to go back and look.

7 Q. We'll look for ourselves. Now, would you agree that the
8 press releases that you had issued, as you described earlier,
9 were significant event in the life of this company?

10 A. They were developments, sure.

11 Q. Because you felt that they were developments, you notified
12 the public, right?

13 A. Yes.

14 Q. The public could, if it wanted to, choose to read and react
15 to that information, correct?

16 A. Yes.

17 Q. Others could choose to publicize that information even
18 further. Newsletters could further report about the company
19 based on your press releases, correct?

20 A. Yes.

21 Q. If The Wall Street Journal wants to write about a press
22 release, like Mr. Shargel asked you about, they don't need to
23 ask for your authorization to do so, correct?

24 A. Correct.

25 Q. If Barron's or The Financial Times or any of these other

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Swartzburg - cross

1 news services want to run with your press release, they can to
2 that, right?

3 A. Yes.

4 Q. It's called a press release so that the press reports it,
5 right?

6 A. Yes.

7 Q. By the way, did Donna Levy have anything to do with you
8 issuing the press releases?

9 A. No.

10 MR. SREBNICK: Thank you.

11 THE COURT: Ms. Cohen.

12 **REDIRECT EXAMINATION**

13 BY MS. COHEN:

14 Q. Mr. Srebnick was just talking about an example of the Wall
15 Street Journal writes a story about a press release. Mr.
16 Shargel asked you some questions using Merrill Lynch as an
17 example when they write a report about a stock. Do you recall
18 that?

19 A. Yes.

20 Q. When Merrill Lynch writes a report on your stock, do you
21 expect those reports to contain true and accurate information?

22 A. Yes.

23 Q. When The Wall Street Journal writes an article about a
24 press release you put out, do you expect that article to
25 contain true and accurate information?

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Swartzburg - redirect

1 MR. SHARGEL: I object to the form of that question.

2 THE COURT: Overruled.

3 A. Yes.

4 Q. I think Mr. Shargel asked you questions about volatility in
5 the market and how that would affect shareholders out there and
6 what they would think about that. Do you recall those
7 questions on cross-examination?

8 A. Yes.

9 Q. How would it look for Cardiac Networks in the marketplace
10 if a major shareholder, like Date Palm Capital, was selling its
11 shares in the marketplace?

12 MR. SREBNICK: Objection. Calls for a 701 opinion.

13 THE COURT: Overruled.

14 A. Any large amount of selling, whether the public knows it's
15 Date Palm or any other large shareholder, any large amount of
16 selling would have a negative impact on the stock price, in my
17 opinion.

18 Q. How long after the share reduction, the voluntary share
19 reduction, at Cardiac Networks did David Levy exercise and
20 convert the promissory note and get about 2 million free-
21 trading shares?

22 A. My recollection is the intent to convert was in September
23 and the actual issuance happened in November.

24 Q. When in relation to the reduction in shares was the actual
25 conversion by David Levy?

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Swartzburg - redirect

1 A. After.

2 Q. Do you recall how long after?

3 A. Within a month.

4 Q. You were asked a lot of questions by Mr. Shargel about the
5 lawsuit by Norman King and American Marketing. Do you recall
6 being asked about that on cross-examination?

7 A. Yes.

8 Q. You were shown a document in evidence, Defendant's Exhibit
9 A57.

10 MS. COHEN: If we could pull that up somehow, maybe on
11 the ELMO.

12 Q. Do you recall when you saw A57, an email you sent to David
13 Levy regarding that lawsuit, right?

14 A. Yes.

15 Q. What was David Levy's involvement in responding to the
16 lawsuit filed by Norman King against Cardiac Networks?

17 A. The lawsuit named the company, David Levy, Fotis
18 Georgiadis, and the transfer agent, and the involvement was to
19 collectively come up with a defense against the lawsuit.

20 Q. Was David Levy involved in coming up with a defense to the
21 lawsuit?

22 A. Yes.

23 Q. Cardiac Networks had an attorney who was involved in coming
24 up with a defense to the lawsuit, is that right?

25 A. Yes.

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Swartzburg - redirect

1 Q. Mr. Shargel showed you in the document that is in evidence
2 as A57 that there was a draft of what he called a counterclaim?

3 A. Yes.

4 Q. Do you know if that counterclaim was ever filed?

5 A. This all happened after I left the company, but I was told
6 the counterclaim was never filed.

7 MR. SREBNICK: Objection to what he was told.

8 THE COURT: You can't say what you were told.

9 Q. Do you know if the counterclaim was ever filed?

10 A. The counterclaim was never filed.

11 Q. What evidence do you have that Zev Helfer was engaged in
12 some sort of scheme to defraud or collusion?

13 A. I have no direct evidence.

14 Q. What evidence did you have that Zev Helfer had conspired to
15 defraud the company with Norman King?

16 A. No direct evidence.

17 MS. COHEN: A moment to confer, your Honor?

18 THE COURT: Yes.

19 MS. COHEN: No further questions, your Honor.

20 MR. SHARGEL: May I, Judge?

21 THE COURT: Very briefly.

22 MR. SHARGEL: Very briefly.

23 **RECROSS-EXAMINATION**

24 BY MR. SHARGEL:

25 Q. Do you remember that you presented the idea of

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Swartzburg - recross

1 counterclaims to Mr. Levy?

2 A. Yes.

3 Q. In other words, that was something that you reported to him
4 as to the progress of the lawsuit, right?

5 A. Yes.

6 Q. I show you what's been marked for identification as A56.

7 I'm just going to be five minutes. Before I put this up there
8 or put it before you, a person in any corporation who has free-
9 trading shares is entitled to sell them at his or her
10 discretion, right?

11 A. Yes.

12 Q. Unrestricted means unrestricted, no restrictions, correct?

13 A. I will say normally yes, unless there's other criteria that
14 would cause that person to be otherwise restricted. In other
15 words, even if I had unrestricted legends on my shares, I still
16 could not have sold shares as the CEO without meeting other
17 criteria.

18 Q. Because of your position?

19 A. Because of my position.

20 Q. But you knew full well that David Levy had unrestricted
21 shares?

22 A. Yes.

23 Q. Let me show you again what's been marked as A56 for
24 identification. Do you recognize that?

25 A. Yes.

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Swartzburg - recross

1 Q. What do you recognize it to be?

2 A. An email discussing strategies for addressing this lawsuit.

3 Q. It's an email that went from you to David Levy?

4 A. Yes.

5 MR. SHARGEL: I offer it into evidence.

6 MS. COHEN: No objection, your Honor.

7 THE COURT: A56 is in evidence.

8 (Defendant's Exhibit A56 received in evidence)

9 MR. SHARGEL: We will publish that at another time. I
10 can read it to the jury another time.

11 Q. I want to ask you one more question before I sit down.

12 Under the terms of the conversion note -- do you know what I
13 mean when I say "conversion note"?

14 A. Yes.

15 Q. Was that the note that was in the amount of \$200,000?

16 A. Yes.

17 Q. The whole purpose of making it a convertible note was that
18 it could be changed, that's what it means by "conversion,"
19 right?

20 A. Yes.

21 Q. Meaning that instead of having a note where the company is
22 liable to pay or agrees to pay money, in other words, pay the
23 loan back, in its simplest terms, right?

24 A. Yes.

25 Q. In fact, there was even interest, in those years there was

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Swartzburg - recross

1 9 percent interest, right?

2 A. I don't remember the exact percent, but yes, there was
3 interest.

4 Q. There was interest. One option was that David Levy could
5 wait and get paid back \$200,000 in cash, but he converted that
6 note to stock, right?

7 A. Yes.

8 Q. When he received the stock, that was according to the terms
9 of the note he was entitled to do that, right?

10 A. Yes.

11 Q. He was entitled to get that unrestricted stock, correct?

12 A. I can't make the comment about restricted or unrestricted,
13 but he certainly was entitled to convert the note.

14 Q. Certainly was entitled to convert the note to stock, right?

15 A. Yes.

16 MR. SHARGEL: I have no further questions.

17 MS. COHEN: Your Honor, briefly?

18 THE COURT: One.

19 FURTHER REDIRECT EXAMINATION

20 BY MS. COHEN:

21 Q. You said there was other criteria when someone can't sell
22 even if the stock is unrestricted?

23 A. Correct.

24 Q. What other criteria are you talking about? You talked
25 about yourself as an insider.

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Swartzburg - redirect

1 A. It is my understanding that insiders, such as myself, or an
2 affiliate who owns a certain percentage, I believe it is 10
3 percent or more, has additional restrictions on whether they
4 could sell their shares.

5 Q. You say an affiliate who owns 10 percent or more. Do you
6 mean an entity or person who owns 10 percent or more shares in
7 the company?

8 A. Yes, 10 percent of the outstanding common shares.

9 Q. That entity or person who owns 10 percent or more of the
10 shares of the company also has restrictions on their ability to
11 sell?

12 A. There are additional restrictions.

13 MS. COHEN: No further questions.

14 MR. SHARGEL: Judge, may I?

15 THE COURT: No, no. All good things come to an end.

16 You are excused.

17 (Witness excuse)

18 THE COURT: Call your next witness.

19 MS. COHEN: Your Honor, the government calls Alan
20 Weiner.

21 ALAN WEINER,

22 called as a witness by the government,

23 having been duly sworn, testified as follows:

24 THE WITNESS: Alan Wendel Weiner. A-L-A-N,
25 W-E-N-D-E-L, W-E-I-N-E-R.

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Weiner - direct

1 THE COURT: Please sit down, Mr. Weiner. Get yourself
2 right up to the microphone make yourself comfortable.

3 MS. COHEN: May I inquire, your Honor?

4 THE COURT: Yes.

5 DIRECT EXAMINATION

6 BY MS. COHEN:

7 Q. Mr. Weiner, what is your educational background?

8 A. Graduated from Armstrong State College in Savannah,
9 Georgia, got an MBA while working at Coca-Cola company at
10 Mid-America College.

11 Q. Where do you live now?

12 A. Atlanta, Georgia.

13 Q. Can you briefly describe your work history after receiving
14 your MBA.

15 A. Really it was after college. I started and have been in
16 the foods service business about 25 years, spent most of my
17 career at the Coca-Cola company, a company called Valassis, and
18 currently a company called Focus Brands.

19 Q. What do you do at Focus Brands now?

20 A. I lead a group that is responsible for putting food in
21 restaurants, grocery stores, Carvel, a portfolio of brands that
22 we own.

23 Q. How long have you been with Focus Brands?

24 A. A little over two and a half years.

25 Q. Do you know someone named Will Goldstein?

1 A. Yes, I do.

2 Q. How do you know Will Goldstein?

3 A. My children and his children grew up together. I mean I
4 have young children. I've known Will in the business
5 community, or at least in the Jewish community, in Atlanta.
6 That's how I got to know him.

7 Q. At some point in time did you work with Will Goldstein?

8 A. Yes. I had left Valassis to go work for a small company
9 and got recruited away, and then three months after that they
10 cleaned house. I was part of that. Then had started to do
11 some work with Will.

12 Q. What work was Will doing at the time you began working with
13 him?

14 A. Will was working for Valassis as a serial entrepreneur. He
15 had just purchased a company called Find.com. My goal was to
16 help him further that out. It was like a search engine, just
17 like Google.

18 Q. When did you start working with Will Goldstein on Find.com?

19 A. Sometime in early March of 2009.

20 Q. When you started working with Will Goldstein on Find.com,
21 what type of work were you doing?

22 A. Really trying to help grow it from its inception -- he
23 hadn't done anything with it -- anywhere from trying to develop
24 programs to attract users, frequency, different methodologies,
25 the type of search engine that it could become.

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Weiner - direct

1 Q. What work did you do with Will Goldstein for Find.com to
2 try to find investors for Find.com?

3 A. Will had created a private placement memorandum, and then
4 eventually we met with some investors, so we talked about the
5 opportunity.

6 Q. Did there come a time when you met with David Levy and
7 Donna Levy?

8 A. Yes.

9 Q. When was that?

10 A. Latter part of May of 2009.

11 Q. What was the purpose of your meeting with David Levy and
12 Donna Levy?

13 A. Will had known of David through I guess other business
14 associates, so Will had an interest in trying to learn more
15 about what David did. That was the initial time we met him.

16 Q. Where was this meeting?

17 A. At David Levy's home.

18 Q. Where was that house?

19 A. Fort Lauderdale.

20 Q. Who was at the meeting?

21 A. It was myself, Will, David, and Donna Levy.

22 Q. What did David Levy say at this meeting at his house in
23 Florida?

24 A. Basically, David had talked about the type of business --
25 not the type of business, but how he went about his business,

1 saying I can help you raise money for your company, not to
2 exceed like the 5 to \$6 million range, I can help you
3 understand the type of shell that you need to have in order to
4 do that. It was more about what you need to do to go out and
5 to publicly trade that, to trade something.

6 Q. Let's back up a little bit.

7 A. Yes.

8 Q. What did David Levy explain to you at this meeting that he
9 did? What was his business? What was he providing?

10 A. David basically said he helped people, small startup
11 companies or small companies, helped them raise money, the
12 needed cash to do other things within their business.

13 Q. What did David Levy say about the 5 to \$6 million range?

14 A. David had said that's below the radar screen. He said when
15 you get over that 10 to \$12 million or somewhere in that area,
16 you create a lot more attention.

17 Q. If you can explain for the jury, what was getting over \$10
18 to 12 million or 5 to 6?

19 MR. SHARGEL: Judge, I object to this as asked and
20 answered.

21 THE COURT: Overruled.

22 A. Could you repeat the question.

23 Q. Sure. What was David Levy saying about the 10 to
24 20 million? Where was that going? Can you explain that.

25 A. It was 10 to 12.

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Weiner - direct

1 Q. 10 to 12.

2 A. What David had said was creating a lot more visibility at
3 that higher level was not the right thing to do, that they had
4 had success at that smaller, mid-size range.

5 Q. The 10 to \$12 million range, what was that? The value of
6 the company, the value of the stock, something else?

7 A. I'm sorry. It was, I guess, the money that you would raise
8 from selling of the shares of the stock.

9 Q. What did David Levy say about staying below the radar?

10 A. That was the right thing to do. It was a lot easier to do
11 that, they had recent success doing that.

12 Q. What did he say that he could do with respect to helping
13 small businesses grow and staying below the radar?

14 A. He had a network. He had people that could help trade, he
15 had people that could help promote. That's what he did. He
16 helped organize it. He had all of those key components.

17 Q. You mentioned that David Levy said that you needed to have
18 a shell. What did David Levy say about the shell?

19 A. He had said that you need to have a clean shell with free-
20 trading shares. It was more about that. There was a number of
21 2 to 2½ million shares.

22 Q. 2 to 2½ million shares in what?

23 A. In the shell.

24 Q. At this time when you were meeting, you and Will were
25 meeting and Donna and David Levy at their house, was Find.com a

1 private or a public company?

2 A. Private.

3 Q. What did Donna Levy say at this meeting?

4 A. Donna really was more about talking about the news. David
5 did most of the talking. Donna more or less talked about her
6 role and what she did. That was really it.

7 Q. What did Donna Levy say her role would be in helping the
8 business?

9 A. She worked in helping with the news. Her job was to take
10 the news and help promote it. She worked with their promotion
11 company or their email company.

12 Q. What did David Levy say at the meeting about what Donna
13 Levy could do?

14 A. I'm sorry?

15 Q. What did David Levy say at this meeting about what Donna
16 Levy's role was?

17 A. It was very divided roles. David was more the
18 orchestrator, and Donna really facilitated all of that with the
19 email, like I said, the email company.

20 Q. How did the meeting come to an end? What was decided at
21 the end of this meeting?

22 A. It was really decided that the next steps would be to meet
23 with somebody else that actually did the trading. So that was
24 really the next steps.

25 Q. Back up for a minute. You talked about an email and people

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Weiner - direct

1 who did an email.

2 A. Mm-hm.

3 Q. What names were discussed by David Levy at this meeting?

4 A. It was not necessarily names of individuals but names of
5 companies. It was like I recall two, Best Damn Penny Stocks
6 and Wall Street Premiere.

7 Q. What was said about Best Damn Penny Stocks and Wall Street
8 Premiere at this meeting?

9 A. That they go out and advertise in certain spots and they
10 constantly are replenishing their inventory of people that are
11 opting in, I guess, for their newsletters.

12 Q. When you say they were discussing, was David Levy
13 discussing, telling you about Best Damn Penny Stocks and Wall
14 Street Premiere?

15 A. It was more Donna that it was David.

16 Q. Who was the person that would do the trading in the stock?

17 A. I'm sorry?

18 Q. Who was the person that David Levy said was responsible for
19 trading in the stock when the company went public?

20 A. At that point he had said there is another somebody, but it
21 wasn't guaranteed. He had mentioned a guy by the name of Pete
22 Veugler.

23 Q. Who did David Levy say Pete Veugler was?

24 A. It was something that he had worked with in the past,
25 recently, that they had partnered with.

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Weiner - direct

1 Q. At the end of the meeting, what did David Levy say that you
2 and Will were to do next?

3 A. At some point to meet with Pete, they would facilitate a
4 meeting with Peter, Pete.

5 Q. What did Donna Levy say at this meeting about what Peter
6 Veugler did?

7 A. He just traded the stock. That's all really Pete did. He
8 just traded the stock.

9 Q. What did Donna and/or David Levy say at the meeting about
10 how Peter Veugler trading the stock would coincide or not with
11 the press releases and the emails?

12 A. Can you repeat the question?

13 Q. Sure. I'll rephrase it.

14 A. Yes.

15 Q. What did David Levy say at this meeting about how Peter
16 Veugler's trading would work vis-a-vis the press side of the
17 operation?

18 A. It was all about having enough news to go over for a period
19 of a few days, whether it was three or four days. Pete talked
20 about -- excuse me. Donna had talked about having enough news
21 to go through, like I said, that three or four days, so when
22 Pete is trading, they would have enough email I guess to go
23 through that three or four days with the news.

24 Q. What was the purpose of having news? What did David Levy
25 or Donna Levy tell you at the meeting was the purpose of having

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Weiner - direct

1 the news go out for three or four days?

2 A. To help with the potential investors, I guess, to come into
3 the company.

4 MR. SHARGEL: Your Honor, I object to his guess. Move
5 to strike.

6 THE COURT: Granted. You can't guess. You have to
7 tell us what you know.

8 A. It was to have potential investors opt in and purchase the
9 stock.

10 Q. When was the next time you spoke with David Levy and Donna
11 Levy?

12 A. I actually saw them in California.

13 Q. Where did you see them?

14 A. At the Beverly Hills Hilton, I believe.

15 Q. Who was at the Beverly Hills Hilton?

16 A. It was myself, Will, and Donna and David.

17 Q. When was this meeting?

18 A. Approximately a month later.

19 Q. You said the first meeting was in or about late May 2009?

20 A. Mm-hm.

21 Q. This was in or about late June 2009?

22 A. Mm-hm.

23 Q. What was the conversation at the Beverly Hills --

24 THE COURT: Excuse me. You have to say yes.

25 A. I'm sorry. Yes.

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Weiner - direct

1 MS. COHEN: Sorry, your Honor.

2 Q. What was the conversation at the Beverly Hills Hilton
3 between yourself, Will, David Levy, and Donna Levy?

4 A. It was David had asked some questions centered around the
5 shell, how is the progress going on that. It was more what
6 type of news were you preparing to have. Then it was about the
7 upcoming meeting with Pete Veugler.

8 Q. What upcoming meeting with Peter Veugler?

9 A. Will and I were planning to see Pete and spend some time
10 talking to him about what he did and his role.

11 Q. Did there come a time where you and Will Goldstein met with
12 Pete Veugler?

13 A. I'm sorry?

14 Q. Did there come a time where you and Will Goldstein met with
15 Pete Veugler?

16 A. Yes, ma'am.

17 Q. Where was that meeting?

18 A. In Las Vegas.

19 Q. When was that in relation to the meeting you just talked
20 about in the Beverly Hills Hilton?

21 A. Shortly thereafter.

22 Q. What did Peter Veugler say at the meeting in Las Vegas?

23 A. Basically, what Pete said was he talked about his role in
24 the trading of what he did, helped us understand what David did
25 and what Donna did. Then he talked about -- he had

1 mentioned -- that was the first time I had heard Eric
2 Cusimano's name, the email company.

3 Q. What did Peter Veugler tell you about what David Levy did
4 versus what Donna Levy did?

5 A. Pete said Donna will work with the news that was coming out
6 and David was more the orchestrator.

7 Q. What did Peter Veugler say about Eric Cusimano?

8 A. I'm sorry?

9 Q. What did Peter Veugler say about Eric Cusimano?

10 MR. SHARGEL: Objection. Hearsay confrontation.

11 THE COURT: Overruled.

12 A. That he had been working with Donna and David for a period
13 of time. He said that his lists were very good and that he had
14 a very good track record, that they worked together in writing
15 their articles.

16 Q. When you say "he," you're talking about Eric Cusimano?

17 A. Yes, ma'am, yes.

18 Q. What did Peter Veugler say about how he worked with Donna
19 and David Levy, about his trading?

20 A. It was recent that they had worked together on another
21 company's needs and that Pete said that from the money part, he
22 talked about the shares in the shell and how it needed to be.
23 Then, at the end of the day Pete said that there was a 50
24 percent share, 50 percent for you as the company and then 50
25 percent back to the group that was doing the work, between

1 himself, Pete, and David.

2 Q. What did Peter Veugler say about how the 50 percent that
3 went back to Donna and David Levy and himself would get divided
4 up?

5 A. A third, a third, and a third.

6 Q. Would that be cash or shares or something else?

7 A. I believe it was wires. I don't know that. I don't know.
8 I assume it was cash from the proceeds.

9 MR. SHARGEL: I move to strike. He doesn't know.

10 THE COURT: Strike it out. The jury is instructed to
11 ignore it.

12 Q. If you could back up for a minute. What was the structure
13 going to be for the company that was going to be taken public?
14 What was Peter Veugler telling you how it would work when the
15 company became public? What would happen to the shares?

16 A. Can you repeat that, please?

17 Q. Sure. I'll withdraw it. I'll rephrase it. What did Peter
18 Veugler say to you about how the shares in the company would be
19 divided up after it was merged into the clean shell?

20 A. They would be free-trading shares and that somebody or he
21 would actually trade the shares.

22 Q. Peter Veugler would trade all the shares in the new
23 company?

24 A. Yes, ma'am.

25 Q. Then what did Peter Veugler tell you would happen to the

1 proceeds from selling those shares?

2 A. Those were the proceeds that were shared. That was the 50
3 percent to himself, I guess Eric Cusimano, and David, and then
4 the other 50 percent was to go back to the company.

5 Q. What did Peter Veugler say about the timing of different
6 emails or news with his trading?

7 A. The news was really supposed to be at the end of the day.
8 It was about making sure that you had news to go out before the
9 first day, the end of the first day, before the second day, end
10 of the second day. It was all about that timing. The greater
11 the news, the best news somewhere around the second day,
12 depending on what the company was going to do, what type of
13 event it was going to have.

14 Q. What would happen towards the end? How many days' cycle
15 did Peter Veugler explain to you the news would be?

16 A. Ideally three to four. He said the people that come in on
17 the first, second, and third days usually did fairly well,
18 sometimes on the fourth day they did not. He said, hopefully
19 the down side is not dramatic.

20 MR. SHARGEL: Judge, I am going to object to this and
21 ask to approach on the basis of a document that was sent by the
22 government.

23 THE COURT: Come over to the side bar.

24 (Continued on next page)

1 (At the side bar)

2 MR. SHARGEL: Your Honor, in short, on February 20,
3 2013, we received a letter from the government saying that --
4 you remember that this was a motion -- I don't if I actually
5 went to a motion. If you read this paragraph on page 2 -- he
6 hasn't mentioned the letters MCGI, but what we have here is
7 they said they would not elicit it on direct examination. They
8 have now opened the door to something. I don't know why they
9 are going about eliciting the timing of trades with MCGI. That
10 is a topic they said they said they are staying away from.

11 MS. COHEN: Your Honor, we haven't elicited anything
12 about MCGI. We are eliciting a conversation where Peter
13 Veugler is explaining to him how he works with Donna and David
14 Levy. We are not going to elicit any testimony about MCGI.

15 MR. SHARGEL: It is a specific stock, and they are
16 talking about how they get 50 percent and how the trades are
17 done and the timing of the trades is so important. This is
18 precisely what we are told they wouldn't elicit.

19 THE COURT: Ms. Cohen, does this deal with MCGI?

20 MS. COHEN: Does what?

21 THE COURT: His testimony.

22 MS. COHEN: No. He is talking about he had several
23 meetings with David and Donna Levy and then with Peter Veugler
24 to explain what these guys did for business and how it worked.
25 They then later on did a deal with MCGI the next year. We are

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Weiner - direct

1 not going to go into that.

2 MR. SHARGEL: The company that he is talking about
3 now, about how they split up the shares and the timing, is that
4 company.

5 MS. COHEN: No. What he is talking about in general
6 is what Peter Veugler explained to him how it worked in
7 general, how he worked with their clients.

8 THE COURT: You can't say we are not going to deal
9 with MCGI, or whatever the initials are, and then deal with it
10 by just not naming the company. You're saying you have an
11 independent basis, there is an independent basis for his
12 testimony?

13 MS. COHEN: This is a year before MCGI, and he is
14 meeting with Peter Veugler at David Levy's insistence to find
15 out how they work.

16 THE COURT: On that basis, the objection is overruled.

17 MR. KRAMER: Your Honor, may I say one thing? This
18 sentence in the government's letter that Mr. Weiner would
19 describe a meeting at Veugler's condominium in Florida during
20 which he carefully instructed Veugler about the timing of
21 trades is exactly what he is testifying to.

22 MS. COHEN: He is not. That is a meeting a year later
23 at the condominium. This is a different meeting.

24 THE COURT: The objection is overruled.

25 (In open court)

1 Q. After you met with Peter Veugler and he explained to you
2 how he worked with Donna and David Levy and Eric Cusimano, what
3 was the next time you spoke with David and Donna Levy?

4 A. I may have spoken -- is it on?

5 THE COURT: We will have to use the old-fashioned
6 voice projection. Raise your voice.

7 A. I may have spoken to him, but I saw him, met with David, in
8 New York. It was probably, again, about several weeks later,
9 maybe a month later, I met David and Donna as well as Eric
10 Cusimano and his spouse or fiancée at that point in time.

11 Q. This is in or about late summer 2009, is that where we are?

12 A. I don't think it is late summer. I think it is early to
13 mid summer.

14 Q. What was the purpose of your meeting with Eric Cusimano,
15 Donna, and David Levy?

16 A. It was ironic, that meeting. David and Donna were crossing
17 the country, I think, in their bus. At that point it was more
18 meeting Eric and understanding what Eric did and how he did it
19 and the writing and more about the newsletter.

20 MR. SHARGEL: I'm sorry. It's not projecting back
21 here.

22 A. I'm sorry. The meeting was more to meet Eric and talk to
23 Eric, understand about his writing and how he did it, talk a
24 little bit more about how he had been successful, again, the
25 content of his writing. Like when I started, it wasn't

1 intentional to meet David there. It's just that we were there
2 for other things and he was going through there, like I said,
3 on his bus.

4 Q. Where was the meeting with Donna and David Levy and Eric
5 Cusimano?

6 A. It was at a restaurant.

7 Q. Was Will Goldstein also there?

8 A. Yes, ma'am.

9 Q. What did Eric Cusimano tell you he did with respect to
10 writing?

11 A. That he and Donna worked together, that they took the press
12 releases and made them their own. They took them and made them
13 their own to speak to their users or people that had signed up.

14 Q. What did Eric Cusimano tell you about what newsletters he
15 had and what email databases he had?

16 A. Eric talked about a number that he had had in totality. It
17 was 70 to 80,000 people that had signed up. He mentioned
18 several sites. I can only recall two. Like I said when I
19 started, it was Best Damn Penny Stock and then Wall Street
20 Premiere I think is the name.

21 THE COURT: Best Damn Penny Stock and what was the
22 second one?

23 THE WITNESS: Wall Street Premiere.

24 Q. This meeting you said was in a restaurant in New York?

25 A. Yes, ma'am.

D3crlev3

Weiner - direct

1 Q. Was it in Manhattan?

2 A. I think so, yes.

3 Q. When was the next time you saw David and/or Donna Levy?

4 A. It was down in Atlanta, Georgia.

5 Q. You talked about they were taking a bus tour. What did you
6 mean by that?

7 A. David and Donna had a bus that I guess each year they took
8 time and went on the road. I don't know exactly all the parts,
9 but I saw them in southern California, New York, and then in
10 Atlanta via their bus.

11 Q. When you saw David and Donna Levy in Atlanta, this is again
12 2009?

13 A. Yes, ma'am.

14 Q. When is it in relation to the meeting in Manhattan?

15 A. It's probably a couple of weeks later. In addition to
16 David and Donna, it was myself, Will, and I believe there was
17 one of Will's other partners there.

18 Q. Where was this meeting?

19 A. It was at a restaurant.

20 Q. What did David Levy say at this meeting?

21 A. It was more, again, conversation around where the shell
22 was, did you have everything in the right manner, really more
23 discussion of the type of news that we were considering to help
24 promote the company.

25 Q. Was this a discussion specific to Find.com?

D3crlev3

Weiner - direct

1 A. Yes, ma'am.

2 Q. When was the next time you met with Donna and David Levy?

3 A. It was probably a few weeks later than that down in
4 Florida.

5 Q. Was that meeting at their house in Florida?

6 A. Yes, ma'am, in Fort Lauderdale.

7 Q. What did you see when you went to the house in Florida?

8 A. Can you be a little more specific?

9 Q. Sure. What type of cars did you see when you went to Donna
10 and David Levy's house in Florida?

11 A. They drive a Bentley.

12 Q. Did you see any other? Did you see any boats at the house?

13 A. They had a boat that was docked outside, had a motorcycle.
14 Very luxurious items.

15 Q. What did David Levy tell you at his house?

16 A. David talked. More it was going back to parts of where we
17 started about saying below the radar screen, don't be lavish,
18 stay below the radar screen, put things in other people's
19 names. He had mentioned that more than once.

20 Q. What did David Levy tell you about any work he did in
21 Panama?

22 A. At some point moving forward into 2010 David I know went
23 back and forth, I don't know for what reasons, but said at some
24 point in time he could help maybe trading or doing emails out
25 of there. But nothing more than that.

D3crlev3

Weiner - direct

1 THE COURT: We will take our luncheon recess now. In
2 the meantime, we will work on the microphones so everybody can
3 hear what people are saying.

4 THE JUROR: If he could adjust it toward him.

5 THE COURT: It is lunchtime anyway. We'll take our
6 luncheon break, work on the acoustics, and see you at 2
7 o'clock.

8 (Luncheon recess)

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D3CLLEV4

AFTERNOON SESSION

2:05 p.m.

(Jury not present)

THE COURT: We're still waiting for the jury or some of them. Want to bring Mr. Weiner in?

(Witness present)

MR. SHARGEL: Your Honor, may I say something?

THE COURT: Yes.

MR. SHARGEL: I hope it's all right with the Court, but we planned to put in jury instructions, not like the government boilerplate, but specific instructions on Friday. Would that work for the Court?

THE COURT: Yeah. I had some hope you were going to do it jointly.

MR. SHARGEL: I don't have any problem with most of the boilerplate that we have. I know we have to have a charge conference on some key issues. There's 200 pages and a lot of boilerplate. I think there's some issues --

THE COURT: How much of the boilerplate do you think we really need?

MR. SHARGEL: I don't think we need 200 pages. I don't think we need a charge that goes on for six hours.

THE COURT: I agree with that.

MS. COHEN: Your Honor, the government had tried to submit it as a joint request, but the defense said they want to

D3CLLEV4

1 submit their own.

2 THE COURT: OK. Fine.

3 So are you still thinking you'll be finished on
4 Friday?

5 MS. COHEN: Yes. I think even possibly Thursday, your
6 Honor.

7 THE COURT: And when should we have the charging
8 conference, Mr. Shargel, Friday?

9 MR. SHARGEL: Friday. I suppose Friday. We'll get
10 our request in in the morning. If you put it on for the
11 afternoon, is that too tight?

12 THE COURT: If you want me to read them it's too
13 tight. You want a spontaneous reaction, I'll give you that
14 right away.

15 MR. SHARGEL: We'll try for Thursday night.

16 THE DEPUTY CLERK: Judge, the jury is here now.

17 THE COURT: OK, Marlon, call them in.

18 Are we all set?

19 MR. SHARGEL: Yes.

20 (Continued on next page)

D3CLLEV4

1 (Jury present)

2 THE COURT: Good afternoon. Please be seated.

3 All right, Ms. Cohen.

4 MS. COHEN: Thank you, your Honor.

5 BY MS. COHEN:

6 Q. I believe right before the lunch break you were telling the
7 jury what David Levy told you about his business dealings in
8 Panama; do you recall that?

9 A. Yes.

10 Q. What did David Levy tell you about his business dealings in
11 Panama?

12 A. It wasn't necessarily his business dealings. He just said
13 he may have the opportunity to trade and do email out of that
14 area.

15 Q. And by that area, did David Levy use the word Panama?

16 A. Yes.

17 Q. And you also you testified already on direct about a
18 meeting with Peter Veugler in Las Vegas?

19 A. Yes.

20 Q. Do you recall that meeting?

21 A. Yes.

22 Q. What did Peter Veugler say about how the proceeds that
23 would go to Peter Veugler, Eric Cusimano, Donna and David Levy
24 would be divided up in any deal?

25 A. David would do that.

DECLLEV4

Weiner - direct

1 Q. Are you familiar with a company called Banneker?

2 A. By name only.

3 Q. How are you familiar with it by name only?

4 A. Sometime in 2010, you know, during a conversation with
5 David, I was there. It wasn't directly with me. He referred
6 to them as a company that you might have ability to do it more
7 than once, to go out and promote the company more than once,
8 and that was it.

9 MS. COHEN: No further questions, your Honor.

10 MR. SHARGEL: May I inquire from here? It's very
11 short.

12 THE COURT: Yes. Wherever you're most comfortable.

13 MR. SHARGEL: Thank you, sir.

14 CROSS-EXAMINATION

15 BY MR. SHARGEL:

16 Q. Did you, sir, ever invest in Greenway Design?

17 A. Excuse me?

18 Q. Greenway Design Group, did you ever invest in that
19 business?

20 A. No, sir.

21 Q. Did you ever invest in Banneker?

22 A. No, sir.

23 Q. Did you ever invest in Cardiac Network?

24 A. No, sir.

25 Q. Did you ever invest in Emerging World Pharma?

DECLLEV4

Weiner - cross

1 A. No, sir.

2 Q. Did David Levy ever invest in Find.com to your knowledge?

3 A. I don't know.

4 MR. SHARGEL: No further questions.

5 THE COURT: Thank you, Mr. Shargel.

6 Mr. Srebnick.

7 MR. SREBNICK: One moment.

8 Judge, I have no questions of the witness. Thank you.

9 THE COURT: Thank you very much. You're excused,
10 Mr. Weiner.

11 THE WITNESS: Thank you very much.

12 (Witness excused)

13 THE COURT: Next witness.

14 MS. COHEN: Your Honor, at this time the government
15 would like to read a stipulation into evidence and publish two
16 exhibits that relate to that stipulation.

17 THE COURT: All right.

18 MS. COHEN: The stipulation has the caption of the
19 case and it's stipulated and agreed to by the parties in the
20 case that:

21 No. 1. Government Exhibits 701-1 and 701-2 are true
22 and accurate copies of documents that were in David Levy's
23 possession on December 17, 2011, and that they were inspected
24 and photocopied on that date by the United States customs and
25 border protection officer at the Miami International Airport

D3CLLEV4

1 upon David Levy's return to the United States from Panama.

2 It's further stipulated and agreed that Government
3 Exhibits 701-1 and 701-2 may be received in evidence at trial
4 and that this stipulation may be received in evidence at trial.

5 It's dated and signed by all the parties and the
6 stipulation is marked S-6.

7 The government moves S-6 and Government Exhibits 701-1
8 and 701-2 into evidence.

9 THE COURT: They're received in evidence.

10 (Government's Exhibits S-6, 701-1, 701-2 received in
11 evidence)

12 MS. COHEN: Mr. Dinot, if we can just publish, please
13 start with the first one, Government Exhibit 701-1.

14 Turn to the fifth page. Turn to the next page. Next
15 page. Go a few pages in. To the last page. And if you can
16 just go back to the first page for a minute and highlight the
17 first entry there, Cascata Capital LLC.

18 If you can look at the second document in evidence,
19 Government Exhibit 701-2, which is also a document that is part
20 of the stipulation that was in David Levy's possession on
21 December 17, 2011. Turn to the fourth and fifth page.

22 Thank you, your Honor.

23 One moment, your Honor, to confer.

24 THE COURT: Yes.

25 MS. COHEN: If you can go to the third name up from

D3CLLEV4

1 the first block where it says Brett Taylor and if you can
2 highlight that, please.

3 Now if I can publish a document that is in evidence
4 through a stipulation -- it's not previously been published --
5 Government Exhibit 1500-20. If you can just blow up the email
6 part.

7 Thank you.

8 MR. MASTER: And, your Honor, there's two other
9 documents we'd like to publish.

10 MR. SHARGEL: May we have a stipulation that I am not
11 the Jerry that's in the email?

12 MS. COHEN: So stipulated, your Honor.

13 MR. MASTER: Just two other documents to be published,
14 one already admitted subject to connection by future
15 stipulation the parties intend to enter into.

16 This has previously been described as emails related
17 to bestdamnpennystocks.com, and the client ID associated with
18 that is 323895. And I'm just going to publish, introduce and
19 publish subject to connection Government Exhibit 605-9, which
20 are billing records associated with this account, client ID
21 323895, as well as several other accounts. And it lists
22 billing points of contact for 323895, bestdamnpennystocks, and
23 the names listed are David Levy, Eric Cusimano, and G.S. Media
24 Inc.

25 At this time the government calls Derrick Holmes.

D3CLLEV4

1 DERRICK M. HOLMES,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MASTER:

6 THE COURT: Mr. Master.

7 MR. MASTER: Yes. Thank you, your Honor.

8 Q. Good afternoon, Mr. Holmes.

9 A. Good afternoon.

10 Q. Where were you born?

11 A. I was born in Waterloo, Iowa.

12 Q. And where do you live now?

13 A. Aurora, Colorado.

14 Q. What do you do for a living?

15 A. I'm sorry?

16 Q. What do you do for a living?

17 A. I own my own watch and clock company.

18 Q. What's the name of the company?

19 A. Banneker Inc., Banneker watches.

20 Q. And who is Banneker Inc. named after?

21 A. It's named after Benjamin Banneker. Benjamin Banneker made
22 the first clock in America back in the 1700s.

23 Q. And why did you decide to name your company after him?

24 A. Well, you know, with our watches and our clocks, we use
25 exotic woods. Banneker made the first clock in America

D3CLLEV4

Holmes - direct

1 entirely out of wood. So all our watches pay homage to his
2 clock.

3 Q. Now I'm going to show you what's been marked as 300-A and
4 300-B. Do you recognize these items, sir?

5 A. Yes.

6 Q. How do you recognize them?

7 A. They're watches from my watch line.

8 Q. Are they your new collection or an older collection?

9 A. This is older collection.

10 MR. MASTER: Your Honor, the government would offer
11 Government Exhibit 300-A and 300-B and request permission to
12 publish them to the jury.

13 MR. SHARGEL: No objection.

14 THE COURT: 300-A and B are received and you can give
15 them to the jury.

16 (Government's Exhibits 300-A, 300-B received in
17 evidence)

18 Q. Now, when did you found Banneker, sir?

19 A. 2003.

20 Q. And what prior experience did you have in the jewelry
21 business before founding Banneker?

22 A. I founded my first company was Marquee Watch and it was
23 founded in 1999.

24 Q. And what did you do with Marquee Watch?

25 A. Marquee was a company that featured athletes, either their

D3CLLEV4

Holmes - direct

1 signature or their likeness inside of the watch, professional
2 athletes mainly.

3 Q. And when did you found that company?

4 A. 1999.

5 Q. And who was the first person you put on the face of a
6 Marquee Watch?

7 A. The first person we actually signed was Curt Warner.

8 Q. And who's Curt Warner?

9 A. Curt Warner at the time we signed him was the quarterback
10 for the St. Louis Rams.

11 Q. And after you signed Curt Warner, did there come a time
12 when you began signing additional athletes to appear on the
13 face of your watches?

14 A. Yes.

15 Q. And in connection with that activity, did there come a time
16 when you met someone named Tim Hardaway?

17 A. Yes.

18 Q. And so who is Tim Hardaway?

19 A. Tim Hardaway is, he was a former professional point guard.
20 He played for Golden State Warriors and then for the Miami
21 Heat.

22 Q. And was he still a professional athlete at the time that
23 you met him?

24 A. Yes.

25 Q. And did he have any awards or acclaim when you tried to

D3CLLEV4

Holmes - direct

1 sign him?

2 A. When, yeah, he was an all-star. Think he had been an
3 all-star three or four times at that point. He ended up like
4 being a five time NBA all-star.

5 Q. Now, did there come a time when you discussed your ideas
6 for the Banneker watch company with Tim Hardaway?

7 A. Yes.

8 Q. And what was Tim Hardaway's reaction to the idea, without
9 saying the substance of what he said, what was his reaction?

10 A. You know, he thought it was a great concept. He liked the
11 history and the correlation between Banneker's clock and what
12 we would do with the wood and the watches. So he liked it,
13 liked the idea a lot.

14 Q. And what if any money did Tim Hardaway give to help kick
15 off the Banneker watch idea?

16 A. You mean in terms of like?

17 Q. The corporation.

18 A. Yeah, you mean what amount did he put in?

19 Q. Yes.

20 A. At first he put in \$10,000. And then a little later on he
21 put in I think like a hundred thousand dollars.

22 Q. And what kind of company was Banneker at the time that Tim
23 Hardaway made these initial investments?

24 A. We were private, private company.

25 Q. And what role did Tim Hardaway end up playing in the

D3CLLEV4

Holmes - direct

1 company?

2 A. He became the president of the company.

3 Q. And what did you use the money for that Tim Hardaway had
4 given you to help start up Banneker?

5 A. At the time, you know, we were working on watch designs,
6 getting prototypes put together, overall operations of the
7 business, office, and travel and...

8 Q. And when did Tim put in this, well, 10,000 and then hundred
9 thousand?

10 A. When?

11 Q. Yes.

12 A. He first invested in Marquee Watch so that was 1999, and
13 then he invested into Banneker right around 2003.

14 Q. And what if any ownership stake in Banneker watches did Tim
15 Hardaway get in exchange for his investment?

16 A. You mean in terms of like percentage?

17 Q. Yes.

18 A. I believe it was somewhere around 15, 15 percent.

19 Q. And over time, while your company was still private, who
20 else put in money to help the company?

21 A. Thor Construction was one of our investors, and also
22 Charles Riehle was one of our investors.

23 Q. And who's Charles Riehle?

24 A. Charles Riehle is a friend of mine from Iowa.

25 Q. And who is Thor Construction?

D3CLLEV4

Holmes - direct

1 A. Thor Construction is a company from Minneapolis.

2 Q. And did they loan you money as well as give you some equity
3 ownership stake?

4 A. Yeah. It was in -- they invested in the company and, you
5 know, got an equity stake in the business.

6 Q. And what percentage of the company did Mr. Riehle and Thor
7 Construction get?

8 A. Thor Construction, I believe, I think they retained around
9 5 percent; and Charles around 5 percent, maybe a little bit
10 more.

11 Q. And what did you do with the money that Mr. Riehle and Thor
12 Construction put into the company?

13 A. We actually got a website put together. We did our first
14 line, full line of watches, several different styles. You
15 know, we obviously also did some traveling, some more designs,
16 and just kind of general overall operations of the company.

17 Q. And who designed the watches?

18 A. I did myself.

19 Q. And who if anyone helped you design the watches?

20 A. I would have different designers that would, you know, work
21 with me that were actually, you know, good on the computer and
22 was able to photoshop and really put those things together. So
23 I had various different other artists that worked along with
24 me.

25 Q. And how long did it take you to design a watch?

D3CLLEV4

Holmes - direct

1 A. Oh, it, you know, sometime I could design a watch maybe in
2 a couple hours and sometime it take a couple weeks, you know,
3 with changes. Kind of depends on how I was inspired or how it
4 ended up looking, you know. So it varied.

5 Q. And how much travel did you do to help build the business?

6 A. A lot, a lot of traveling. You know, probably, you know,
7 15 days out of a month a lot of times, off and on sporadically
8 I would travel those early years and in general.

9 Q. And where would you go on your travels?

10 A. I was going to Minneapolis a lot, Chicago, New York, Los
11 Angeles, Miami.

12 Q. And what was the purpose of your travels, what were the
13 things you were trying to accomplish through your travels?

14 A. You know, a lot of meeting with celebrities, potential
15 investors, you know, working on trying to put together
16 distribution, talking maybe to different watch companies and
17 that.

18 Q. How many full-time employees were there of Banneker watches
19 at that time?

20 A. At that time it may have been maybe three, three that were
21 pretty much full time.

22 Q. And who was the CEO of the company?

23 A. Myself.

24 Q. And who actually was responsible for selling the watches
25 once they were made?

D3CLLEV4

Holmes - direct

1 A. You know, we sold on the website. We had some, some sales
2 reps that was repping the product. We actually worked with a
3 company called Jostens and sold a number of watches that way
4 through them as well.

5 Q. And who did you sell your watches to, did you sell directly
6 to individuals or were there also distribution deals?

7 A. It was mainly to like individuals. We never really had a
8 strong distribution network set up.

9 Q. And how many -- how much time did you put into the company
10 per week to build it?

11 A. You know, pretty much around the clock, you know. When
12 you're not physically working, you're thinking about it. So I
13 don't know in hours, maybe 80 hours, if not more, you know what
14 I mean. When you have your own business, you never really stop
15 working. So if you're not physically working, you're thinking
16 about it, thinking about what you can do to get ahead or keep
17 the lights on or whatever you need to do, constant.

18 Q. Now, you referenced a relationship that you had with a
19 company called Jostens. What is Jostens?

20 A. Jostens is a company that sells graduation products that,
21 actually, they're the largest global grad product provider.

22 Q. What's a grad product?

23 A. For graduation, like graduation rings and caps and gowns
24 and tassels and yearbooks and that type of thing.

25 Q. And what if any work did you do with Jostens in 2006?

D3CLLEV4

Holmes - direct

1 A. Well, one of the first things that the relationship that we
2 worked on was we actually made the 2006 NBA championship
3 watches for the Miami Heat.

4 Q. And for what team was Tim Hardaway playing at the time you
5 made the watches?

6 A. Yeah, the Miami Heat.

7 Q. And in 2007, what contract did you begin negotiating with
8 Jostens?

9 A. We began to negotiate a consulting agreement whereas we
10 became a vendor and developing product for urban line of
11 graduation jewelry that was watches and clocks, watches,
12 earrings, pendants. And then we even did a deal where we
13 brought Beyonce to do a particular class ring, the first time
14 it was ever done where she designed a ring that could be sold
15 to the sophomores, juniors, and seniors.

16 Q. And for what class years was this consulting arrangement?

17 A. What? I'm sorry.

18 Q. For which years was this consulting agreement going to
19 last?

20 A. For the Banneker graduation jewelry, it was class of 2008,
21 2009, and 2010.

22 Q. That was the agreement that you had, you were reaching with
23 Jostens in 2007, correct?

24 A. Yes.

25 Q. Now I'd like to direct your attention to mid-2007. First

D3CLLEV4

Holmes - direct

1 of all, as of that time, what if any complaints did you have
2 from your initial investors about the way you were managing
3 your company?

4 A. Ask that question again. I'm going to make sure I'm clear.

5 Q. Had any of your initial investors ever complained that you
6 were mismanaging the money?

7 A. No, not to me, not that I know of.

8 Q. What kind of additional financing were you looking for to
9 help you build your company?

10 A. Well, yeah, we were -- we had a business plan at that time
11 and to really expand and to grow our business. We were looking
12 for I think it was somewhere in the neighborhood of 2.5 million
13 was in our business plan, I believe, at that time.

14 Q. What did you want to do with that 2.5 million that you were
15 hoping to get?

16 A. We wanted to be able to really put together an extensive
17 line of the Banneker product, as well as putting in the
18 marketing dollars that it really takes to get behind a product
19 and give it market thrust.

20 Q. And how much money did you believe it was going to cost to
21 create this new line of urban graduation jewelry?

22 A. With the Jostens deal?

23 Q. Yes. Was Jostens funding that or were you going to have to
24 fund that?

25 A. We had to fund it. They were providing the distribution

D3CLLEV4

Holmes - direct

1 and the sales team.

2 Q. How much money did you think it was going to cost to
3 fulfill that contract?

4 A. I knew it was going to be close to a half million dollars.
5 It came in somewhere around 400, I think around 400,000, if I'm
6 not mistaken, that we had invested.

7 Q. When you're making jewelry or watches, what kind of costs
8 do you have? In addition to paying your own expenses and
9 marketing, what do you have to do to actually be able to sell
10 something?

11 A. I mean I have to warehouse the product.

12 Q. How about making the product?

13 A. Oh, yeah, we have to have the product manufactured.

14 Q. And what costs were there associated with that?

15 A. You know, there is when -- just the nuts and bolts of
16 having a watch made is there's a wholesale cost in which the
17 product costs or it's the cost and then it's wholesale and then
18 it's a retail cost that you market up in order to get paid.
19 But what you have in the watch is what you pretty much have to
20 pay for it, for each watch to get made.

21 Q. Did you manufacture the watches yourself?

22 A. No.

23 Q. Who did you have manufacture the watches?

24 A. We had a couple manufacturers. Think Tank was one of our
25 manufacturers. And also worked with Fossil, they manufactured

D3CLLEV4

Holmes - direct

1 some product for us as well.

2 Q. Now, in connection with your efforts to raise money for
3 Banneker, to fund the manufacturing and all the other things
4 you described, did there come a time when you met David Levy
5 and Donna Levy?

6 A. Yes.

7 Q. How were you introduced to them?

8 A. I met David and Donna Levy through a friend, a mutual
9 friend of mine who I met through Tim Hardaway.

10 Q. What was the name of your friend?

11 A. Bree is what we call her, Bree.

12 Q. Do you know her full name?

13 A. Sabrina.

14 Q. And how did you -- where did you first meet the Levys?

15 A. I first met them at their home.

16 Q. Where is their home located, which home?

17 A. Well, it was in Fort Lauderdale.

18 Q. And approximately when was this?

19 A. It was sometime in 2007. I think late summer or sometime
20 in 2007.

21 Q. And who came with you to the meeting?

22 A. It was Tim, Bree, and myself.

23 Q. And describe their home.

24 A. You know, it's a nice really nice home.

25 Q. Where is it located?

D3CLLEV4

Holmes - direct

1 A. It's located in Fort Lauderdale. I don't remember the
2 street or the address.

3 Q. What if any cars did you see in the driveway?

4 A. They owned, I think they owned an Escalade. I don't know
5 if they owned it or leased it, but an Escalade was one of the
6 vehicles.

7 Q. Did you see any other vehicles in the driveway as well?

8 A. I don't know if I seen any at that time but, you know.

9 Q. In a subsequent meeting or subsequent visit, did you see
10 any other vehicles in their home?

11 A. Yeah, they had another vehicle.

12 Q. And what kind?

13 A. I think it was a Bentley.

14 Q. And what effect did it have on you to see their living
15 situation?

16 A. Well, I mean, you know, the conversation that we had, you
17 know, I felt that they were people who could make things
18 happen, for sure.

19 Q. Now, when you arrived at their home with Bree and Tim
20 Hardaway, who else was at the home besides David Levy and Donna
21 Levy?

22 A. I don't know if there was anybody there when I first -- I
23 think it was just us, I believe, when I first came there that I
24 can remember.

25 Q. Did there come a time when you met an individual named

D3CLLEV4

Holmes - direct

1 Fotis?

2 A. Yes, yeah.

3 Q. When did you meet Fotis?

4 A. It was on one of my trips there. I mean maybe the second
5 time or so that I came I had an opportunity to meet Fotis.

6 Q. And what was your understanding of his relationship with
7 the Levys at that time?

8 A. I knew they were friends. I believe that they may have
9 been working together in some respects.

10 Q. Now, at this first meeting, what did the Levys -- well,
11 what did David Levy explain that he and Donna could do to help
12 your company?

13 A. Well, we were just talking about possibilities, you know.
14 They knew that we were trying to raise money and they were
15 basically telling me that it was a possibility that they could
16 take the company public and just kind of some of the details of
17 what that would entail.

18 Q. Had you ever worked for a public company before?

19 A. No.

20 Q. Have you ever taken a company public before?

21 A. No, no, I haven't.

22 Q. So what was the source of the -- did you have any
23 independent source of information for what they were
24 describing?

25 A. You know, no. You know, of course you know about NASDAQ

D3CLLEV4

Holmes - direct

1 and those type of things, but I never had bought any stock or
2 owned any stock or, you know, I never done anything with public
3 companies, you know, or anything of that nature.

4 Q. Now, what if anything did David Levy say about a company
5 called Cardiac Networks at this first meeting?

6 A. I don't know if it was the first meeting or it may have
7 been the second meeting, but I know they had had some success
8 with the company that they had taken public, Cardiac Network,
9 and they were, you know, saying that, you know, kind of showing
10 us that the company was doing well and what they were doing and
11 I was impressed with the technology of Cardiac Network and
12 that.

13 Q. And that's what David described to you?

14 A. I'm sorry?

15 Q. In other words, did you have any independent knowledge of
16 Cardiac Networks other than what they were describing to you?

17 A. Oh, no, no.

18 Q. And how much money did you ask for from David Levy and
19 Donna Levy?

20 A. Well, you know, I think -- I'm trying to see if that point
21 had we sent the business plan. I think our business plan,
22 again, I believe it had, I think we were asking for two and a
23 half million or somewhere in that neighborhood.

24 Q. And did there come a time when David Levy agreed to give
25 you \$2 million to help you build your company?

D3CLLEV4

Holmes - direct

1 A. Yes.

2 Q. And in exchange for what?

3 A. When you say in exchange for, let me understand.

4 Q. What did he want to do with your company after -- in
5 connection with him giving you \$2 million?

6 A. Well, taking the company public and through that, it was an
7 amount of stock that I believe would -- that they would get or
8 a certain percentage of the public company, I believe, that
9 they would get for that.

10 Q. Now, did there come a time when you entered into what's
11 known as a letter of intent documenting the agreement between
12 yourself and your company and David Levy?

13 A. Yes.

14 Q. Now, did you retain a signed copy of this letter of intent?

15 A. I did.

16 Q. And do you still have that signed copy?

17 A. I wouldn't know where it is if I did, no.

18 Q. And I'm going to show you, in preparation for your
19 testimony here today, were you shown an unsigned copy of a
20 letter of intent?

21 A. Yes.

22 Q. Do you recognize that document?

23 A. Yep, it looks familiar.

24 Q. And how do you recognize it?

25 A. It looks similar to the letter of intent that we ended up

D3CLLEV4

Holmes - direct

1 executing. It's been a while, but it looks, you know, it looks
2 like what we signed.

3 Q. It contains the terms of the agreement that you remember?

4 MR. SHARGEL: Object to the leading.

5 THE COURT: Overruled.

6 MR. MASTER: At this time the government offers
7 Government Exhibit 802-8.

8 MR. SHARGEL: I object on the foundation as to what it
9 is.

10 THE COURT: Sustained.

11 Do you have another question, Mr. Master?

12 MR. MASTER: Yes.

13 Q. This contained the terms of the agreement that you remember
14 entering into with David Levy?

15 MR. SHARGEL: Object to the leading. I'm sorry.

16 THE COURT: Overruled. Go ahead. What's the
17 question?

18 Q. Does this contain the terms of the agreement you remember
19 entering into with David Levy?

20 A. It looks like what pretty much what we had agreed on, yes.
21 It looks.

22 MR. MASTER: Government offers Government
23 Exhibit 802-8.

24 MR. SHARGEL: Objection, foundation.

25 THE COURT: Sustained.

D3CLLEV4

Holmes - direct

1 MR. MASTER: OK. Just one moment.

2 THE COURT: Do you have a question, Mr. Master?

3 MR. MASTER: Yes, your Honor. I'll proceed.

4 THE COURT: Thank you.

5 Q. All right. Just to the extent that this document refreshes
6 your memory, just take a look at it and see if it refreshes
7 your memory at all as to the terms of your agreement with David
8 Levy.

9 MR. SHARGEL: I object to that question.

10 THE COURT: Overruled.

11 Q. When you finished reviewing the document, please set it
12 aside and tell me if it refreshes your memory.

13 A. Yeah, again, it looks like.

14 Q. So, again, how much money did David Levy agree to give to
15 Banneker watches?

16 A. We talked about \$2 million.

17 Q. And what did David Levy agree to do with Banneker watch,
18 the private company? In other words, what was he going to
19 convert the private company Banneker into?

20 A. Into a public company, into a -- from, you know, from what
21 I understand, it's a shell and it takes the shell in order to
22 go public. We were doing like a reverse merger into a shell to
23 take the private company public.

24 Q. Who explained that to you?

25 A. David did.

D3CLLEV4

Holmes - direct

1 Q. And who was going to cover the costs of taking the company
2 public?

3 A. Date Palm Capital was, David.

4 Q. Date Palm Capital, whose company was that?

5 A. It's David's company that I understand.

6 Q. Who was going to manage the company under this agreement
7 once you took the company public?

8 A. Date Palm Capital.

9 Q. Who was actually going to be the CEO of the company once it
10 was a public company, who was going to run the company?

11 A. Myself.

12 Q. And how much of the company, the public company, was David
13 going to own and how much were you and the folks who work with
14 you going to own once the company went public?

15 A. You know, I believe, I think they were getting 25 percent
16 of the company or something to that effect. Again, I don't
17 totally remember, but that's what I'm -- that's what I think it
18 was, something right in there, and we were going to retain the
19 rest.

20 MR. SHARGEL: Move to strike.

21 THE COURT: Overruled.

22 That's your best estimate, Mr. Holmes?

23 THE WITNESS: Yes.

24 THE COURT: That's your best estimate?

25 THE WITNESS: Yes, sir.

D3CLLEV4

Holmes - direct

1 Q. OK. Now, after you signed this letter of intent with Date
2 Palm Capital, did there come a time when David Levy proceeded
3 to acquire a shell and to initiate steps to take your company
4 public?

5 A. Yes. I guess my understanding was that they already owned
6 a shell, I thought, you know, and again.

7 Q. What did David tell you?

8 A. I believe that he said that we have a shell and it takes a
9 shell, we want to do a reverse merger, put your company in the
10 shell. That way you're public. We can raise money, you know,
11 and that was kind of my understanding of it.

12 Q. Now, as you were negotiating this with David Levy, did
13 there come a time when Donna Levy explained how she could help
14 your company?

15 A. Yeah. I mean Donna basically was kind of explained to me
16 how, you know, with the public company, the thing that makes a
17 public company be visible is that, you know, people have to
18 know about the company and that's what she specialized in as I
19 guess the PR work of getting the news out to potential people
20 who wanted to buy stock in the company to know about what you
21 do, the story, who you are, that kind of thing.

22 Q. And what role if any did she say she could play in
23 investors relations?

24 A. In -- say that again?

25 Q. Not just press, but investor relations, what role did she

D3CLLEV4

Holmes - direct

1 say she could do in investor relations?

2 A. Yeah, the same thing. I mean she would pretty much handle,
3 you know, that end of the business.

4 Q. And did you agree to let her serve in those roles for the
5 business?

6 A. Yes.

7 Q. What experience did you have with press relations and
8 public relations for a publicly traded company?

9 A. Not any.

10 Q. Now I'd like to show you what's already in evidence as
11 Government Exhibit 350-5. Could we pull that up on the screen.
12 And here's a paper copy. If you wouldn't mind publishing that.
13 If you could just take a look at that.

14 Mr. Holmes, do you recognize, have you seen that
15 document before your preparation for your testimony today?
16 Just turn to the second page.

17 Are you familiar with a company called Cumetrix Data
18 Systems Corp.?

19 A. Yes.

20 Q. How did you become familiar with it?

21 A. You know, I knew that it was the prior company that had
22 been in the shell, you know, I believe.

23 Q. And if you just turn to page 3. It's a letter from someone
24 named Laura Anthony.

25 Do you know, have you ever used an attorney named

D3CLLEV4

Holmes - direct

1 Laura Anthony for anything?

2 A. I haven't.

3 (Continued on next page)

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D3crlev5

Holmes - direct

1 Q. Do you know approximately when the merger process began?

2 A. I know it was in the fall of 2007.

3 Q. When did the merger actually close? Did it close in 2007
4 or not until 2008?

5 A. I believe it was 2007.

6 Q. Now I'd like to show you what is already in evidence as
7 Government Exhibit 350-4. Prior to your testimony today, have
8 you seen Government Exhibit 350-4?

9 MR. MASTER: If you wouldn't mind publishing that, Mr.
10 Dinet.

11 A. What is your question again? I'm sorry.

12 Q. Had you seen this document before you were prepared to
13 testify today or it was shown to you today?

14 A. No.

15 Q. If you wouldn't mind turning to the second page. Had you
16 seen any document previously in which David Levy named himself
17 president of Banneker, Inc. before?

18 A. I think I have.

19 Q. Was this Banneker, Inc. in operation at the same time as
20 your private company Banneker?

21 A. No. To be honest, I don't know for sure.

22 Q. I'm going to show you what has already been introduced into
23 evidence as 350-9.

24 MR. MASTER: If you wouldn't mind publishing that.

25 Q. If you wouldn't mind turning to the second page of that

D3crlev5

Holmes - direct

1 document. Prior to your preparation for your testimony here
2 today, what, if any, awareness did you have that David Levy,
3 while acting as president and CEO of Banneker, Inc., issued
4 unrestricted shares to these entities EZ English, Inc. and L.
5 Paul and Associates?

6 A. No, I wasn't aware of that.

7 Q. It references an entity called EZ English, Inc. Are you
8 familiar with that entity?

9 A. No.

10 Q. It references something called 504 certificates, the 504
11 certificates should be issued without restrictive legend. Are
12 you familiar with something called Rule 504?

13 A. Yes.

14 Q. How did you become familiar with Rule 504?

15 A. I had heard it a few times. I don't know if it was from
16 David or whatever. I have heard the term.

17 Q. What is your understanding of the term?

18 A. My understanding of 504 is that you can -- 504 is like an
19 apparatus to bring investment money into your company by
20 issuing shares, is what I understand.

21 Q. If you could turn to the third page, there is something
22 called a conversion notice related to a convertible note issued
23 by Banneker, Inc. Do you recall issuing any convertible notes
24 to an L. Paul and Associates.

25 A. No.

D3crlev5

Holmes - direct

1 Q. If you could turn to the next page. This relates to a
2 convertible note issued by Banneker, Inc. to this entity
3 EZ English. Do you recall issuing a convertible note to an
4 entity called EZ English in your capacity as CEO of Banneker?

5 A. No.

6 Q. It lists an individual named Yael Tal as president of
7 EZ English. Do you know who Yael Tal is?

8 A. No.

9 Q. Collectively, if you turn back to the second page, this
10 relates to 1 million shares of common stock issued in the name
11 of Banneker, Inc. and it states "without restrictive legend."
12 What knowledge, if any, did you have that these million shares
13 were being issued in the name of your company?

14 A. I didn't have any knowledge of it.

15 Q. When did you start getting money from the Levys for your
16 company?

17 A. If I recall, it was like the fall of 2007.

18 Q. To cut to the chase, of the \$2 million that initially was
19 promised to you, how much money did you end up receiving from
20 David Levy and Donna Levy?

21 A. You know, all together it was in the neighborhood of I
22 think 700,000 maybe. I don't know. 600,000, 700,000,
23 something like that.

24 Q. When was most of that money received? In other words, was
25 it over a long period of time or was it . . .

D3crlev5

Holmes - direct

1 A. It was over -- in 2007 and 2008, the end of 2007 and 2008.

2 Q. After the merger closed, what, if any, shares did you issue
3 to those who had helped you with building your company?

4 A. I issued some stock. I had a list of people that had been
5 either investors or instrumental in the company that I ended up
6 issuing some stock to or shares to.

7 Q. Was that a list that you supplied to an entity called a
8 transfer agent?

9 A. Yes, I'm sure.

10 Q. Had you ever worked with a transfer agent before?

11 A. No.

12 Q. Did you execute some documents also so that David Levy
13 could have shares issued to him and others associated with him?

14 A. I'm sure.

15 Q. I'm going to show you what's been previously introduced
16 into evidence as Government Exhibits 350-10 and 350-11. First
17 let's go to 350-11.

18 MR. MASTER: Would you mind publishing that, Mr.
19 Dinet.

20 Q. There are 15 names on a list on that first page. It's in
21 the name of an entity called Standard Registrar and Transfer
22 Company, Inc. Do you recognize the name of that entity,
23 Standard Registrar and Transfer Company Inc.?

24 A. Yes.

25 Q. Who are they?

D3crlev5

Holmes - direct

1 A. They are a transfer agent, a stock transfer company out of
2 Draper, Utah.

3 Q. What role did they serve for public company Banneker?

4 A. They served as our transfer agent.

5 Q. If you could turn to the second page. On the second,
6 third, and fourth pages there is a list of shares issued to a
7 number of individuals, including yourself, Tim Hardaway, Thor
8 Construction, Charles Riehle. Who supplied the names for this
9 list?

10 A. If I recall, I did.

11 Q. Are these all people who you wished to give shares to in
12 Banneker upon its going public?

13 A. Yes.

14 Q. If you could turn to the fourth page of that document, it
15 states, "Each of the certificates shall bear the standard
16 restrictive legend. If you have any questions or comments,
17 please contact us." It is signed "Yours very truly, Banneker,
18 Inc." Who signs for Banneker, Inc. in this document?

19 A. David Levy.

20 Q. What was your understanding what it meant to have
21 restricted shares?

22 A. What was my understanding of restricted shares?

23 Q. Yes.

24 A. My understanding of restricted shares is they are
25 restricted for 6 to 12 months. I think it's like 12 months.

D3crlev5

Holmes - direct

1 Q. When they are restricted, are you allowed to sell them?

2 A. No. When they are restricted, no, you can't sell them.

3 Q. Under the terms of your deal with David Levy, what
4 understanding did you have about the shares that he was to
5 receive? Would they be restricted or unrestricted?

6 A. If I recall, I think they are unrestricted.

7 Q. If you wouldn't mind taking a look at Government Exhibit
8 350-10.

9 MR. MASTER: If you could publish 350-10, Mr. Dinet.

10 Q. Do you recognize that list?

11 A. No, I don't.

12 Q. If you wouldn't mind taking a look at the second page.
13 Actually, I'm sorry, the fourth page. There are a number of
14 individuals and entities listed on here. Do you know as you
15 sit here today who supplied the list of names for this page and
16 then the next page, for this list? Do you recall?

17 A. You're asking me who did?

18 Q. This relates to an issuance of shares without restrictive
19 legend.

20 A. OK.

21 Q. In the name of Banneker, Inc. Do you see that?

22 A. Yes.

23 Q. It's dated February 12, 2008. Do you remember how David
24 Levy told you who he wanted to have receive shares in Banneker?

25 A. I believe so.

D3crlev5

Holmes - direct

1 Q. What did he do? What did he do to tell you who he wanted
2 to have receive shares in Banneker?

3 A. I believe that he just basically -- I think he just told me
4 that these are some of the people that he wanted to receive
5 shares from their end.

6 Q. Did you know an individual named David Champion, the first
7 person on the list?

8 A. No.

9 Q. Did you know an entity called Kodel Investment in Ontario,
10 Canada?

11 A. No.

12 Q. How about any of the other people on this list, or
13 entities? If you could take a look.

14 A. Yes, I don't know any of these people.

15 Q. On the second page of that list there is a signature. If
16 you wouldn't mind turning to that. Is that your signature?

17 A. Yes, it is.

18 Q. Do you remember authorizing unrestricted shares in Banneker
19 to be issued in the names of these individuals and entities?

20 A. I believe so.

21 Q. I want to ask you some questions about what happened as you
22 began getting money in for the company. What was your plan for
23 spending the \$2 million?

24 A. Like I said, we had a business plan. It was we wanted to
25 expand our product line, get several different styles of

D3crlev5

Holmes - direct

1 watches, clocks.

2 Q. What did you want to do --

3 MR. SHARGEL: I don't know if he finished answering
4 the question.

5 THE COURT: Had you finished, Mr. Homes?

6 THE WITNESS: Yes, pretty much.

7 A. Marketing, stuff like that.

8 Q. What did you intend to do first with the money that you had
9 wired from David Levy?

10 A. The first money was to pay back some of our early
11 investors.

12 Q. Did you communicate that plan to David Levy?

13 A. Yes.

14 Q. What did you do with some of the first money you got in?

15 A. I paid back some of our early investors.

16 Q. After that, what did you start spending the money on?

17 A. After that, that was like some of our first round of money.
18 The second moneys was to fulfill the relationship with Jostens.
19 So we had class jewelry made, so I paid for the class jewelry.

20 Q. How expensive was that?

21 A. I know it was close to 300,000 -- about 350,000 at least,
22 almost close to 400,000 if I remember.

23 Q. What were you intending to do with the next money after you
24 had, I guess, designed and manufactured the Jostens jewelry?

25 A. The next money was going to be to really blow the Banneker

D3crlev5

Holmes - direct

1 watch line out. We had planned on doing watches and clocks.

2 Q. What about money for marketing? Were you intending to
3 market all these products?

4 MR. SHARGEL: I object to the leading.

5 A. Yes.

6 MR. SHARGEL: Excuse me. I object to the leading.

7 THE COURT: Overruled.

8 Q. What, if anything, were you intending to spend on marketing
9 for these products?

10 A. I can't remember the exact numbers, to be honest, of what
11 the line items on our business plan were. We were going to try
12 to spend a pretty nice amount of money on the marketing of the
13 product.

14 THE COURT: Did you have a view, Mr. Homes, as to what
15 a nice amount of money was?

16 THE WITNESS: I'm sorry?

17 THE COURT: You say you spent a nice amount of money
18 on marketing. What is a nice amount of money on marketing?

19 THE WITNESS: I think maybe 50,000, a hundred thousand
20 maybe. Again, I'm just off, what I'm thinking. But I know we
21 were going to spend a lot of money on magazine ads, promos, and
22 different things like that.

23 Q. How did you compensate yourself for your work for Banneker?

24 A. Basically, the way I was receiving the money and like some
25 of the people I owed, I was basically paying back some of the

D3crlev5

Holmes - direct

1 debts. And a lot of the money, again, went into some of the
2 product. So I wasn't able to pay myself a salary. I work out
3 of my home. I had another office, but I worked out of my home
4 mainly.

5 Q. So when you had living expenses, what did you do after the
6 funds that came in to Banneker?

7 A. I would take some money. I would make some withdrawals of
8 money in order to have money to live on.

9 Q. How about when you traveled? Did there come times after
10 this became a public company that you traveled?

11 A. Yes, a lot of traveling.

12 Q. How did you cover the travel expenses related to Banneker?

13 A. I covered the travel expenses with the Banneker business
14 card. Sometimes I would get cash out if I needed cash for
15 travel.

16 Q. When, if ever, did Banneker host events or parties?

17 A. We hosted a nice amount of parties. We would have investor
18 parties. We would have parties with celebrities. If we went
19 to like an all-star game, we would have a party. If we went to
20 the Super Bowl, we would have a party. There was always
21 something going on.

22 Q. How would you cover the expenses related to these events or
23 parties?

24 A. I would pay for that with the Banneker money tagged as
25 entertainment money.

D3crlev5

Holmes - direct

1 Q. How, if at all, did you record your expenses? What was the
2 purpose of those parties and events?

3 A. To promote the product, to promote the brand.

4 Q. Did there come a time when you retained an accountant named
5 Roy Willis Gentry, Inc.?

6 A. Yes.

7 Q. In fact, who helped pay for some of the accounting work
8 that Roy Willis Gentry did?

9 A. I believe sometimes David would.

10 Q. Did you report your expenses to Roy Willis Gentry?

11 A. Yes.

12 Q. Did Roy Willis Gentry prepare reports and tax returns for
13 the business based on the information you provided him?

14 A. Yes.

15 Q. Did there come a time when Roy Willis Gentry also prepared
16 your personal tax returns as well?

17 A. Yes.

18 Q. When you took money out of the business for personal
19 expenses, what, if any, information would you provide to Roy
20 Willis Gentry about these personal expenses that you were
21 incurring?

22 A. I believe that he handles all of it. We would have
23 meetings. We had to file our taxes quarterly through the
24 business, so we would meet every 90 days or so and kind of go
25 through everything.

D3crlev5

Holmes - direct

1 Q. When you met with your accountant, did you seek his advice
2 on how to properly account for various expenses that you
3 incurred?

4 A. Yes. He used to advise me and tell me what would go in
5 what category, what would be entertainment, what would be kind
6 of -- what all of it would be.

7 Q. What would you do when he gave you advice as to how to
8 account for various expenses?

9 A. I tried to put it together. One of the things I did with
10 Banneker is I used my business card only.

11 Q. So it was all --

12 A. Everything I did businesswise down to the penny was
13 recorded off my Banneker business card. That was one of the
14 things he told me to do for sure.

15 Q. Once it was recorded on the Banneker business card, what
16 would you do with Roy Willis Gentry to account for what should
17 be accounted for on your personal tax return and what should be
18 accounted for on your corporate tax return?

19 A. Just itemize what was entertainment, what was travel, what
20 was lodging, and that type of thing.

21 Q. By the way, what do you mean by your Banneker business
22 card? That was a credit card?

23 A. Yes.

24 Q. Did you fully disclose all of the details of your
25 expenditures on that Banneker business card to your accountant?

D3crlev5

Holmes - direct

1 A. Yes. Yes, I would give him the statements.

2 Q. I'm going to show you what's been marked for
3 identification, and I think it is being admitted by stipulation
4 of the parties, as Government Exhibits 301-1, 301-2, 301-3, and
5 301-4. If you want mind taking a look at these documents, sir.
6 Do you recognize those four items, sir?

7 A. Yes.

8 Q. What are they?

9 A. It is some of our quarterly filings.

10 Q. Related to what entity?

11 A. For Banneker, Inc.

12 Q. Prepared by whom?

13 A. Prepared by my accountant, Roy Gentry.

14 Q. Do you recognize these documents?

15 A. Yes.

16 MR. MASTER: At this time the government offers
17 Government Exhibits 301-1, 301-2, 301-3, and 301-4.

18 MR. SHARGEL: No objection.

19 THE COURT: Received in evidence.

20 (Government's Exhibits 301-1, -2, -3, and -4 received
21 in evidence)

22 THE COURT: I think we'll take our afternoon recess
23 now.

24 (Recess)

25 Q. Mr. Homes, just a couple of more questions about your

D3crlev5

Holmes - direct

1 relationship with your accountant. When, if ever, did your
2 accountant refuse to sign off on your corporate tax returns or
3 personal tax returns because of anything that he saw was
4 improper?

5 A. Never.

6 Q. When did David Levy or Donna Levy ever complain to you
7 about how you accounted for various expenses related to the
8 company?

9 A. I don't remember us having that conversation.

10 Q. Now let me ask you a couple of questions about Donna's role
11 once the company became public. Do you recall Donna Levy
12 creating an email account BannekerInc@gmail.com?

13 A. I believe so.

14 Q. In front of you is what has been marked for identification
15 as Government Exhibit 301-9. Do you see what is in front of
16 you that has been marked for identification?

17 A. OK.

18 Q. Do you recognize that document?

19 A. Yes, it looks familiar.

20 Q. What is it?

21 A. Did you say what is it?

22 Q. Yes. Well, withdrawn. Do you recognize an email address
23 on the top of that page?

24 A. Yes.

25 Q. What is the email address and who do you remember it being

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Holmes - direct

1 associated with?

2 A. To Donna.

3 Q. What is the email address that you remember her creating
4 for Banneker?

5 A. Yes.

6 Q. What? Go ahead.

7 A. Is your question is this the email that I believe she
8 created?

9 Q. Yes.

10 A. Through Banneker or for Banneker?

11 Q. Yes.

12 A. I believe so, yes.

13 Q. What email address do you remember her using for Banneker?

14 A. This would be it that I remember, yes.

15 Q. What is this, if you could explain to the jury.

16 A. I'm sorry. It's BannekerInc@gmail.com.

17 Q. Did you have the ability to access BannekerInc@gmail.com?

18 A. No, I didn't.

19 Q. Who actually, to your knowledge, was the only one who had
20 the ability to send and receive emails from
21 BannekerInc@gmail.com?

22 A. I believe it would be Donna.

23 Q. What role did she take in handling press relations for the
24 company?

25 A. She actually was the press representative for the public --

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1 for Banneker, Inc.

2 Q. Who drafted press releases for Banneker, Inc.?

3 A. To my knowledge, I believe she drafted them. I don't know
4 if she had help or did it some other way sometimes, but I
5 believe it was mainly her working on the press releases.

6 Q. Who handled investor relations for Banneker, Inc.?

7 A. I believe that also was Donna's role as well.

8 Q. Did there come a time when investors would complain to you
9 about things happening with Banneker stock?

10 A. Yes. You know, you would always get calls of investors
11 complaining about the stock or the stock price, if it wasn't
12 moving fast enough for them or whatever, that type of thing.

13 Q. What did Donna tell you to do if someone complained to you
14 about something related to Banneker stock?

15 A. She would always say, just refer them to investor
16 relations.

17 Q. Which was?

18 A. She handled investor relations.

19 Q. So she would refer these people to her?

20 A. Correct.

21 Q. In preparation for your testimony here today, you were
22 asked to review certain press releases issued in the name of
23 Banneker, Inc. Do you recall that?

24 A. Yes.

25 Q. Did you recognize all of the press releases that were

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Holmes - direct

1 issued in the name of Banneker, Inc.?

2 A. I won't say I recognize all of them because, again, it's
3 been a long time. Most of them were familiar to me.

4 Q. I'd like you to take a look at what's already in evidence
5 as Government Exhibit 103-1.

6 MR. MASTER: If we could pull that up, Mr. Dinot.

7 Q. If you could take a look at the screen, Mr. Homes. Do you
8 recognize that press release?

9 A. I remember it, yes.

10 Q. With respect to that press release, do you recall Donna
11 sharing details of that press release with you prior to its
12 issuance?

13 A. I believe so.

14 Q. That was issued July 29th of 2008?

15 A. Yes.

16 Q. What do you recall this press release relating to?

17 A. This press release was related to our launch with Jostens,
18 with the urban jewelry, and the clothing line that we did, and
19 Beyonce.

20 Q. Who handled the distribution of these press releases?

21 A. To my knowledge, it was Donna, I believe.

22 Q. I'd like you to now take a look at what is in evidence as
23 Government Exhibit 103-2. Do you recall this document? It's a
24 press release August 6, 2008, Banneker, Inc., "No high school
25 student left behind." Do you recall that?

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Holmes - direct

1 A. Yes. It looks real familiar, yes.

2 Q. What does this press release relate to?

3 A. It was a concept that was coined basically saying that we
4 wanted to make sure that all students had an opportunity to
5 have something that really speaks to them in terms of
6 graduation jewelry product.

7 Q. Do you recall seeing this before it was issued?

8 A. I'm sorry?

9 Q. Do you recall seeing this before it was issued?

10 A. Yes. Like I say, it looks familiar. I'm sure I have. I
11 remember the "no high school student left behind" slogan.

12 Q. I'd like to ask you some questions about the Levys' funding
13 of your company and what started to happen after you got in the
14 first, I guess, half a million or so in funding.

15 MR. SHARGEL: I object to this. It was 6 or \$700,000
16 dollars, it was not \$500,000.

17 MR. MASTER: I'll rephrase, your Honor.

18 THE COURT: Thank you.

19 Q. What started to happen to the funding that you were
20 expecting to receive from these?

21 A. I can't remember exactly the time frame that all of the
22 money was supposed to come in. I remember there was delays on
23 when some of the rest of the funding was supposed to come in.

24 Q. How was that affecting your business?

25 A. How would that affect?

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Holmes - direct

1 Q. How were the delays affecting your business?

2 A. There was things that we were planning on doing with the
3 other funding that was supposed to come in. So, of course, we
4 would have to delay our plans.

5 Q. At the same time that you were experiencing delays in
6 funding, what, if any, contact did you have from other
7 individuals who were looking to invest in Banneker?

8 A. Let me understand the question. I'm sorry.

9 Q. Did there come a time when individuals other than the Levys
10 offered to invest money in Banneker?

11 A. From the very beginning we had a group, before we went
12 public we had a group that was looking at putting the 2.5 in.

13 Q. Did they end up putting that 2.5 in?

14 A. No, they didn't.

15 Q. Did there come a time when individuals started approaching
16 you with offers related to what you previously described as a
17 Rule 504?

18 A. Oh, yes.

19 Q. What kind of offers were they giving you?

20 A. Basically, for a certain amount of stock versus a certain
21 amount of money that they would put in.

22 Q. In other words, what did they offer you? They offered you
23 cash?

24 A. Yes.

25 Q. In exchange for what?

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1 A. In exchange for stock.

2 Q. Did there come a time when you entered into a Rule 504
3 agreement with an entity called Mazuma Holding Corp.?

4 A. Yes.

5 Q. I'd like to show you what's been marked for identification
6 as Government Exhibit 350-19. It's already in evidence,
7 actually.

8 MR. MASTER: Mr. Dinet, if you could publish page 13
9 of Government Exhibit 350-19. That's a document dated May 14,
10 2008. It relates to issuance of 80,000 shares in the name of
11 Mazuma Holding Corp. If you could turn to the next page, Mr.
12 Dinet.

13 Q. Do you recall being approached by an individual who worked
14 with Mazuma Holding Corp. with an offer to provide financing
15 for the company in exchange for 80,000 shares?

16 A. Yes, I remember.

17 Q. If you could turn to the next page. How much money did
18 Mazuma agree to give you in exchange for the 80,000 shares?

19 A. I think it was around 40, \$50,000.

20 Q. It states here 80,000 shares at \$50,000. Does that --

21 A. That sounds right.

22 Q. What was your financial position at the time that you
23 entered into this agreement?

24 A. The company was in need of some additional dollars at that
25 time.

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Holmes - direct

1 Q. Do you recall how many shares were issued to David Levy and
2 affiliates? That's back on Government Exhibit 350-10. That's
3 6 million shares. Do you recall that?

4 A. Yes.

5 Q. The Rule 504 related to the issuance of 80,000 shares,
6 right?

7 A. 80,000, yes.

8 Q. Did you discuss the issuance of the 80,000 shares with the
9 Levys before you actually entered into that Rule 504?

10 A. No, I don't think so.

11 Q. Did there come a time when you heard from David Levy and
12 Donna Levy about this Rule 504?

13 A. Yes.

14 Q. Do you know how they found out about the Rule 504?

15 A. I don't know.

16 Q. What did David Levy say to you about the Rule 504?

17 A. I remember having a conversation where he basically said
18 that it's not good to do 504s, it could hurt your stock price,
19 and he asked me not to do any more 504s.

20 (Continued on next page)

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Holmes - direct

1 BY MR. MASTER:

2 Q. And what did you say to him about the reason why you had
3 done the 504?

4 A. Well, you know, the first 504, of course, at that time we
5 all knew that we were in the middle of not getting some money
6 that we had coming. But I didn't realize, you know, that, that
7 it could, you know, hurt the stock price at the time. I just
8 got a call about selling some stock and, you know, the company
9 needed money, so I did the 504.

10 Q. And did you speak with Donna as well about the 504 or just
11 David?

12 A. You know, I think we all talked about it, you know, you
13 know, Donna was encouraging me not to do one as well, not to do
14 504s, you know.

15 Q. And so after May of 2008, what started happening to the
16 money that you were expecting to receive from the Levys?

17 A. You know, it was, there was periods of time where we were
18 promised we were going to get a certain amount of money, we
19 wouldn't, and then that would be pushed back, you know, a
20 little further and wouldn't get it.

21 Q. Describe conversation you had with David Levy in the summer
22 of 2008 about the money that you were expecting to receive.

23 A. Well, you know, we were, you know, we would basically talk
24 about it. I would be saying, hey, when are we going to get the
25 money, when is some more of the money going to come in? He

D3CLLEV6

Holmes - direct

1 would say I'm working on it, working on putting it together.

2 And I just told him, hey, we need it.

3 Most of the money from the onset, again, some of the
4 first money that came in went to investors and it went to --
5 the bulk of that money went to the grad jewelry and that. So
6 we were looking for some of that other money to try to execute,
7 execute what we wanted to do, so.

8 Q. And what during the summer of 2008, what would happen when
9 the deadline that David Levy had set for providing you with the
10 money you were expecting had passed, what would happen?

11 A. You know, we would end up talking and we would end up
12 extending the deadline.

13 Q. OK. And what effect did it have on your business that the
14 deadline kept on getting extended without the balance of money
15 being received?

16 A. You know, it affected us because, you know, we weren't able
17 to, we weren't able to actually have the other money that we
18 had planned on and planned on having to really go out and get
19 the product made that we wanted to get, to do the marketing and
20 all, some of the other things that we wanted to be able to do.

21 Q. By the way, how did, when you were discussing this money
22 raise with David Levy and Donna Levy, how did they say they
23 would actually be raising the money for your company?

24 A. You know, from what I understood, it would be raised
25 through the sale of stock.

D3CLLEV6

Holmes - direct

1 Q. In Banneker? In stock of what?

2 A. Yeah, of Banneker, Banneker stock.

3 Q. What if any understanding did you have as to how they would
4 actually accomplish the money raise?

5 A. You know, a lot of it I didn't know, I didn't know a lot of
6 the ins and outs of it. You know, I know at one time we had
7 talked about doing a -- man, I can't think of the term right
8 now, but it was one way we were going to try to bring money in
9 together once we got everything situated, but we never ended up
10 doing that. But I can't even think of the name of it. I
11 apologize.

12 Q. What if anything did they explain to you about the role
13 that, for example, press releases played in raising money?

14 A. You know, I knew press releases were, you know, were
15 central to potential investors being able to decide whether
16 they wanted to buy the stock or not.

17 Q. And what if any discussions did you have with them about
18 stock promotion activity related to Banneker stock?

19 A. I don't know if we had a lot of conversation, you know, per
20 se about it other than, you know, my main focus was to
21 concentrate on growing the business and, you know, through
22 growing the business, we would be able to create situations
23 from the business that we could then tell, you know, release
24 press about what was going on in terms of, you know, with the
25 company that was exciting.

D3CLLEV6

Holmes - direct

1 Q. And so what role if any did you play in stock promotion of
2 Banneker stock?

3 A. I didn't play any role in the promotion of the stock.

4 Q. And what kind of shares did you have throughout 2008?

5 A. My stock was restricted stock.

6 Q. So what if any shares were you able to sell in 2008?

7 A. None of my personal stock at all.

8 Q. Now, did there come a time when you again did a 504 with
9 Mazuma Holdings?

10 A. Yeah, I did.

11 Q. And what's the reason that you went back to Mazuma Holdings
12 for additional funding?

13 A. Well, that particular time, you know, it was another
14 deadline that we had pushed back that we were supposed to be
15 getting more money into the company.

16 Q. Whose deadline?

17 A. Well, David's deadline. It was that we -- it was a
18 particular time where we were supposed to get more money in for
19 sure, the money was going to come. And I, you know, I didn't
20 do it to be vindictive, but I said, look, if we don't get money
21 in, I'm going to have to do another 504 here because we're
22 dying on the vine here. We got into a little skirmish about
23 it, had a little words.

24 But basically, you know, we were kind of like family,
25 you know, so we were close, you know. I didn't -- I love those

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Holmes - direct

1 guys, I still do. So it was like, you know, you get mad but,
2 you know, I ended up saying, hey, this is what I got to do and
3 I did a 504.

4 THE COURT: You say you love those guys, you're
5 talking about the Levys?

6 THE WITNESS: Yeah.

7 THE COURT: OK.

8 Q. I'd like to go back to Government Exhibit 350-19, page 6,
9 please, if you wouldn't mind looking at the screen. And it's a
10 document related to the issuance of shares, 333,333 shares to
11 Mazuma Holding dated October 29, 2008. And if you could just
12 turn to the next page.

13 And having reviewed this in preparation for your
14 testimony today, do you recall authorizing the issuance of
15 those shares, additional shares to Mazuma Holdings?

16 A. Yes.

17 Q. And, again, what's the reason that you authorized the
18 issuance of these shares?

19 A. We needed money into the company.

20 Q. And what happened to the money that the Levys were
21 promising?

22 A. That money, we didn't get that money.

23 Q. And going into the end of 2008 and the beginning of 2009,
24 what was the company's financial position?

25 A. You know, we were expecting to have the rest of that money,

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Holmes - direct

1 it was another 700 some thousand dollars by the end of that, of
2 that year, of 2008 I believe it was.

3 And then we were going to raise an additional
4 \$2 million, private placement is what we were going to do.
5 That's what I was thinking of. We were going to raise some
6 additional money after we got that money in so we could really
7 kick things off so.

8 Q. Who told you that they were going to raise an additional
9 \$2 million -- that an additional \$2 million would be raised
10 through private placements?

11 A. We talked about it -- Donna, David, myself, Tim -- we had
12 talked about that we could raise some additional money to
13 really kick the company off, and it was through private
14 placement that we were going to raise that money.

15 Q. Now, you stated that you loved the Levys. But what was the
16 status of your relationship as of early 2009, were there any
17 strains in your relationship?

18 A. Yeah, our relationship was strained. It was strained
19 because, you know, a lot of things didn't happen that, you
20 know, we were expecting and hoping to happen, you know. And we
21 were -- things were tight, you know, for the company at the
22 time. And, you know, per our contract, we had money that was
23 coming to us that didn't come. So, you know, it was pretty
24 tense at that point.

25 Q. Now, did there come a time when you learned that Banneker

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Holmes - direct

1 stock was undergoing a 12 for one forward stock split?

2 A. Yes.

3 Q. And what role did you play in deciding whether or not to go
4 forward with a forward stock split of Banneker stock?

5 A. You know, if I recall, man, and, again, I know that we had
6 had some discussions about that. But, you know, things weren't
7 great with us during that time and I had lost a lot of, you
8 know, confidence in what could really happen based on being
9 able to really get things fulfilled and that.

10 Q. So do you recall authorizing a forward stock split?

11 A. No, I don't recall authorizing that.

12 Q. I'd like to publish what's been in evidence as Government
13 Exhibit 350-7. If you could just take a look at that.

14 MR. MASTER: And, Mr. Dinet, if you could put that up
15 on the screen.

16 Q. Now, first of all, is this your handwriting on the first
17 page of the document?

18 A. On the first page of the document, no, it doesn't look like
19 my handwriting, no.

20 Q. And is your address listed on this document?

21 A. No.

22 Q. I'd like you to take a look at the second page of the
23 document. It states 12 for one forward and it relates to a
24 stock split.

25 Do you recall seeing this document?

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Holmes - direct

1 A. I don't recall seeing it.

2 Q. And I'd like you to take a look at the third page of the
3 document. It's signed by someone named Amy Merrill.

4 Do you recall who Amy Merrill was or is?

5 A. Yes.

6 Q. Who is she?

7 A. Amy Merrill works for Standard Registrar, the transfer
8 company.

9 Q. And what if any working relationship did you have with Amy
10 Merrill at this time in early 2009?

11 A. I didn't.

12 Q. And who handled all the transactions with the transfer
13 agent at this time?

14 A. Date Palm Capital did.

15 Q. And who's Date Palm Capital?

16 A. I guess it would be David and, you know, whoever else may
17 have, you know, worked. I don't know really how they work
18 together, you know, in terms of the transfer agent and them. I
19 just assume it was David.

20 Q. But Date Palm Capital you knew to be David's company?

21 A. Yes, David's company, that I know, yes.

22 Q. I'd like you to turn to the next page. Do you see your
23 email address anywhere on this document related to the forward
24 stock split?

25 A. No, I don't.

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Holmes - direct

1 Q. Turn to the next page. Do you see your email address on
2 anything related to this, on anything on this page related to
3 the forward stock split?

4 A. No, I don't.

5 Q. Now turn to the next page. Do you see your email address
6 on anything related to the forward stock split on this page?

7 A. No, I don't.

8 Q. I'd like you to turn to the next page. That's a document
9 dated January 12, 2009, issued in the name of Banneker.

10 Do you see there where it's related to the planned 12
11 for one forward stock split, do you see there on that page?

12 A. Yes.

13 Q. And it states on behalf of the company's board of
14 directors, I hereby authorize you to set the record date for
15 the 12 for one forward stock split to be January 25, 2009.

16 Do you see that in the second paragraph?

17 A. Yes.

18 Q. And then I'd like you to look at the next page. And it
19 states sincerely -- it's a document that states "Sincerely,
20 Derrick M. Holmes, Secretary."

21 Do you recognize that signature?

22 A. It's my signature.

23 Q. It's your name?

24 A. It's my name. No, it doesn't look like my signature.

25 Q. Do you remember authorizing anyone else to sign your name

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Holmes - direct

1 for you related to this stock split?

2 A. I don't remember.

3 Q. And then I'd like you to look at the next page. It states,
4 "ATT Amy, I'll FedEx this check to you today. Please send the
5 letter and if Banneker doesn't pay the bill, I will pay it
6 myself. Thanks."

7 And do you recognize that signature?

8 A. Yeah, looks like David's signature.

9 Q. Do you remember writing any checks authorizing the forward
10 stock split and fund -- paying the fees related to the forward
11 stock split in the name of Banneker?

12 A. No.

13 Q. And this letter that is written in your name, do you
14 remember writing this letter?

15 A. No.

16 Q. And then I'd like you to take a look at Government
17 Exhibit 103-3. It's already in evidence. It's a press release
18 related to a forward stock split.

19 Do you remember reviewing this document related to the
20 forward stock split before it was issued?

21 A. You know, it looks familiar, but I can't say a hundred
22 percent.

23 Q. And do you remember seeing it before it was issued and
24 authorizing it?

25 A. To be honest, I really don't know. I can't remember to be

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Holmes - direct

1 honest.

2 Q. OK. Now, do you recall seeing a lot of activity in
3 Banneker stock in February of 2009, around the time of this
4 forward stock split?

5 A. I remember it more after. I didn't really follow it, you
6 know, like that.

7 Q. Well, after it happened, do you remember seeing on the
8 chart a lot of activity related to Banneker stock?

9 A. Afterwards, yes.

10 Q. And how much more money did you get from the Levys after
11 you saw all that activity in the stock in February 2009?

12 A. I don't know exactly. I know it wasn't much.

13 Q. Under \$5,000?

14 A. That probably would be about accurate.

15 Q. Under \$5,000 total after this activity?

16 A. Yeah, I believe so, if that.

17 Q. And did there come a time -- well, actually, withdrawn.

18 What effect did it have on your business that the
19 Levys had stopped funding the company?

20 A. You know, it was, it was tough. You know, it was tough
21 because you -- I really believed that that money, I believed
22 that the money was going to come through, that things were
23 going to turn around and we would end up getting the rest of
24 the money and I never, never thought that we wouldn't, even all
25 the way to the end.

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Holmes - direct

1 Q. By the way, it references here in this press release there
2 was a special meeting of the board of directors in which the 12
3 for one forward stock split was authorized.

4 Do you remember attending any special meeting with the
5 board of directors related to this stock split?

6 A. I don't recall.

7 Q. So based on the money that you received from the Levys,
8 what happened to your plans to build out a new line of Banneker
9 watches?

10 A. Well, you know, we weren't able to, we weren't able to
11 execute that.

12 Q. What happened to your plans to spend substantial amount of
13 money on marketing for the watches and for the graduation line?

14 A. Yeah, we weren't able to execute that.

15 Q. And what happened to the stock after all the activity that
16 you'd observed in February 2009, what happened to the price and
17 trading volume of the stock?

18 A. You know, it was -- it wasn't in good shape.

19 Q. Now, did there come a time when you had a conversation with
20 Donna Levy concerning the activity that you'd observed
21 happening with Banneker stock?

22 A. Say that again. I'm sorry.

23 Q. Did there come a time when you had a conversation with
24 Donna Levy about what you'd observed happening with Banneker
25 stock, the stock price and trading volume?

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Holmes - direct

1 THE COURT: Do you want to fix a time, the time this
2 activity was going on?

3 MR. MASTER: Yes, your Honor. Withdrawn. I'll ask
4 additional questions.

5 Q. After you were only getting the less than \$5,000 from the
6 Levys, what did you try to do to get the money that they said
7 they were going to give you?

8 A. You know, I think I called to chat with them to see, you
9 know, if we were going to be able to try to bring the money in.

10 Q. And how successful were your efforts to reach them?

11 A. You know, not good. I think I spoke to them maybe -- I
12 think I may have spoke to Donna one more time or so after that
13 time. And, you know, she was basically told me that things
14 were tight for them, things were, you know, tight in general
15 and that, you know, there wasn't no more money forthcoming, so.

16 Q. And approximately how long after February 2009 did this
17 occur?

18 A. It may have been three, four months, five months later,
19 maybe.

20 Q. And, again, what did you ask, what did you say to her and
21 what did she say to you?

22 A. You know, I can't remember the whole conversation, but I
23 just remember knowing that -- that we weren't, you know, that
24 we weren't ever going to get, you know, the rest of the
25 contract fulfilled.

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Holmes - direct

1 Q. What did you say to her about the status of the stock,
2 Banneker stock?

3 A. I think I may have asked her about the stock, the price, I
4 mean where the stock was and that, but I don't remember
5 specifically to be honest.

6 Q. OK. And, again, what was her reaction when you asked her
7 to send the rest of the money?

8 A. Oh, no, she just told me that there was no money. She said
9 they didn't have money and that, you know, basically there
10 would be no more money coming to Banneker basically, you know,
11 any time soon at least. I took that as a never, you know.

12 Q. Now, in preparation for your testimony today, did there
13 come a time when you were asked to review some stock promotions
14 related to Banneker, do you recall that?

15 A. Yes.

16 Q. I'm just going to quickly go through some documents that
17 are already in evidence.

18 MR. MASTER: Mr. Dinet, if you just pull up 103-19.

19 Q. And it's from an entity called stockreads.com. It's dated
20 August 6, 2008.

21 Had you seen this document before your preparation for
22 trial testimony?

23 A. No, I hadn't.

24 MR. SREBNICK: If I could just reserve an objection,
25 we can take it up at the break.

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Holmes - direct

1 THE COURT: All right.

2 MR. SREBNICK: We've discussed it with counsel
3 earlier.

4 THE COURT: Thank you, Mr. Srebnick.

5 Q. And then August -- I'd like to turn to Government
6 Exhibit 103-22. This is stockreads, August 7, 2008.

7 Have you seen this before your preparation for trial
8 today?

9 A. I don't believe so, you know.

10 Q. How about Government Exhibit 103-21, do you recall seeing
11 this before your preparation for trial testimony?

12 A. I don't.

13 Q. How about Government Exhibit 103-23, have you seen this
14 document before?

15 A. It doesn't look familiar.

16 Q. How about Government Exhibit 103-17?

17 A. Somewhat familiar. I may have seen it.

18 Q. OK. Pink Sheet alert.

19 How about 103-12?

20 A. I think that it looks familiar somewhat.

21 Q. Have you heard of the Wall Street Premiere Alert before?

22 A. I heard of them.

23 Q. And how did you hear of them?

24 A. I don't recall to be honest.

25 Q. Did you have any role in issuing this Wall Street Premiere

D3CLLEV6

Holmes - direct

1 Alert?

2 A. Not that I know of. Again, you know, I know Donna would
3 run some of the press releases by me. I don't remember them
4 all. I don't remember which ones. But a lot of times she
5 would run some of the press releases for approval and -- or ask
6 me my opinion on some of the things, so I do know that. But I
7 don't know which ones and that, but.

8 Q. OK. How about 103-43? It's dated February 2, 2009.

9 A. That doesn't look familiar.

10 Q. Dr. Stockpick.

11 How about 103-42, Pinnacle Digest, do you know
12 anything about an entity called Pinnacle Digest?

13 A. Never heard of them really.

14 Q. How about 103-41?

15 A. It doesn't look familiar.

16 Q. How about Government Exhibit 103-40? Document dated
17 February 4, 2009, OTCpicks.com, and it references a number of
18 stocks including BANI.

19 B-A-N-I is the ticker symbol for your company,
20 correct, B-A-N-I, BANI?

21 A. Yes, BANI. No, it doesn't look that familiar.

22 Q. How about 103-39?

23 A. No.

24 Q. Dr. Stockpick also dated February 4, 2009.

25 How about 103-38, February 5, 2009?

D3CLLEV6

Holmes - direct

1 A. No.

2 MR. MASTER: 103-38, Mr. Dinet.

3 Q. Bull and advantage.com alert related to Banneker and other
4 stocks, does that look familiar?

5 A. No, it doesn't.

6 Q. How about 103-36, February 6, 2009, realpennies.com,
7 Banneker, does that look familiar?

8 A. No.

9 Q. How about 103-35, February 9, 2009, OTCpicks.com, does that
10 look familiar to you?

11 A. No.

12 Q. How about 103-34?

13 THE COURT: Do you have much more of this, Mr. Master?

14 MR. MASTER: No, your Honor.

15 Q. It's February 10, 2009. Does that look familiar?

16 A. No.

17 Q. You've never spoken with Pinnacle Digest before?

18 A. No, I haven't.

19 MR. MASTER: And then the final set, your Honor,
20 permission to publish subject to connection.

21 Q. It's bestdamnpennystocks related to Banneker, 605-7B. If
22 you can just take a look on the screen. It states, I want
23 everyone to drop everything and stop researching BANI
24 immediately.

25 MR. SREBNICK: It says start.

D3CLLEV6

Holmes - direct

1 Q. Start. And it's dated January 30, 2009.

2 Are you familiar with an entity called
3 bestdamnpennystocks?

4 A. I may have heard of them, I don't know when, but I'm not
5 going to say familiar.

6 Q. Did you ever hire bestdamnpennystocks help promote Banneker
7 stock?

8 A. No, I didn't.

9 Q. And then if you could turn to the third page, there's
10 another email dated January 31, 2009, also about Banneker from
11 bestdamnpennystocks.

12 Have you seen that before your preparation for trial
13 testimony?

14 A. I don't remember seeing it.

15 Q. Then there's another one on February 2, if you could just
16 take a quick look at that. It's the fourth page.

17 Do you recognize that?

18 A. No.

19 Q. And then there's another one the next day, next page, do
20 you recognize that?

21 A. No, I don't, but.

22 Q. And how about the next day, February 4, 2009, there's
23 another promotion. And I'm just going to continue. There's
24 another promotion February 5, this is the next page. Turn to
25 the next page, Mr. Dinot. And then turn to the next page,

D3CLLEV6

Holmes - direct

1 there's another promotion the next day. It's actually two.

2 A. Yeah, they don't look familiar.

3 THE COURT: They do or they don't?

4 THE WITNESS: They do not. But, you know, again, I --
5 I mean that wasn't what I did. But I don't, you know, it
6 doesn't look familiar.

7 Q. If you just could flip through, look at the additional
8 promotions on February 6, February 7, February 8, February 9,
9 February 10, and February 11.

10 Do any of those look familiar to you? You could just
11 take a look at the document just to -- do any of those look
12 familiar to you?

13 A. No, none of these look familiar to me.

14 Q. Did you authorize any of those to be issued?

15 A. Not that I remember.

16 MR. MASTER: One moment, your Honor.

17 Nothing further.

18 THE COURT: Mr. Shargel.

19 CROSS-EXAMINATION

20 BY MR. SHARGEL:

21 Q. Mr. Holmes, my name is Jerry Shargel. I'm David Levy's
22 lawyer and I have some questions for you.

23 A. OK.

24 Q. So it's the case, is it not, that before you ever meet
25 David Levy and his wife, Donna Levy -- remind us when that was,

D3CLLEV6

Holmes - cross

1 by the way?

2 A. Say that again? I'm sorry.

3 Q. As best you can recall, just as best you can recall, when
4 do you first meet them?

5 A. Where did I or when did I?

6 Q. That was down in Florida, but when? I'm looking for the
7 approximate time.

8 A. It was sometime in the fall of 2007.

9 Q. Fall of 2007. And by that time, you already had investors
10 that you had been dealing with for a number of years, right?

11 A. Investors that --

12 Q. When Banneker was private, before any public offering, when
13 Banneker was private, you had investors, correct?

14 A. Yes.

15 Q. And one of the investors -- I'll pick one of them -- was
16 Tim Hardaway, right?

17 A. Correct.

18 Q. Tim Hardaway was a five-time all-star NBA player, right?

19 A. Yes.

20 Q. You knew and it was public knowledge, published in
21 newspapers, that this is a man that earned a lot of money
22 during his career, correct?

23 A. Correct.

24 Q. And you went to Mr. Hardaway and you borrowed some money,
25 correct?

D3CLLEV6

Holmes - cross

1 A. I didn't borrow money.

2 Q. He invested money, and what did you give him in return?

3 A. He invested money and in return he got ownership in the
4 company.

5 Q. What percentage was his ownership?

6 A. I think, like I said, around 15 percent.

7 Q. And how much did he pay to acquire that equity interest in
8 the company?

9 A. I don't know for sure the numbers. I think it's maybe
10 around a hundred thousand, maybe more, I don't know.

11 Q. Let me show you what has been marked as Defendant's Exhibit
12 A173.

13 MR. SHARGEL: And by stipulation, your Honor, I'm
14 offering it. It's by stipulation admissible.

15 THE COURT: All right. It's admitted then.

16 (Defendant's Exhibit A173 received in evidence)

17 Q. I show you what's been marked as Defendant's Exhibit 173.

18 Do you think it would help if I return some of these
19 papers to Mr. Master. I'll right back with you.

20 I put in front of you what's been marked as A173. By
21 the way, before I ask you a question about the exhibit now in
22 evidence -- actually, we put it up on the screen -- before I
23 even ask you any questions about this, had you ever been to Tim
24 Hardaway's house?

25 A. Yes.

D3CLLEV6

Holmes - cross

1 Q. And did he have nice cars?

2 A. Yes.

3 Q. And did he have a nice house?

4 A. Yes.

5 Q. And did he have all the trappings of success and wealth?

6 A. I mean Tim wasn't -- Tim was not a flashy kind of guy, but
7 you could tell, you know, he wasn't a derelict.

8 THE COURT: Big range there, Mr. Holmes.

9 Q. All right. Looking at A173, does that refresh your
10 recollection looking at that the amount of the note with Tim
11 Hardaway, whose address in Miami, Florida -- was he with the
12 Heat at that time, the Miami Heat?

13 A. Uh-huh.

14 Q. And it was \$320,000 that he invested?

15 A. Yes.

16 Q. And you had other investors as well, right?

17 A. Correct.

18 Q. And by the way, back in 2004 -- you didn't know the
19 Levys -- back in 2004, did you have the idea of one day taking
20 Banneker public?

21 A. No.

22 Q. Absolutely not, right?

23 A. Not that I can remember, no.

24 Q. Let me show you what has been marked as Defendant's
25 Exhibit 170.

D3CLLEV6

Holmes - cross

1 MR. SHARGEL: And by stipulation deeming it
2 admissible, I offer it in evidence, your Honor.

3 THE COURT: OK. 170 is received in evidence.

4 (Defendant's Exhibit 170 received in evidence)

5 Q. I'm going to -- do you recognize 170?

6 A. Let me look at it.

7 Q. Is it Charles Riehle in that one, do you see the second
8 line? Maybe you can see it easier on the screen. The second
9 line it says promises to pay to the order of Charles Riehle?

10 A. Yes.

11 Q. Now, is Charles Riehle buying an interest in the company or
12 was he lending you money?

13 A. He was buying an interest in the company and investing in
14 the company.

15 Q. Well, do you see that the document that's on the screen is
16 not an investment in a company but a promissory note?

17 You were promising to pay him back, weren't you?

18 A. No.

19 Q. You weren't promising to pay him back?

20 A. In terms of his investment, the company, not me personally.

21 Q. So you had no personal liability. This was on behalf of
22 the company. Right?

23 A. Yes, I'm sure.

24 Q. Now, I asked you a moment ago, and I'll put the Tim
25 Hardaway promissory note back in a moment, but I asked a moment

D3CLLEV6

Holmes - cross

1 ago about whether you intended to go public back in 2004 and
2 you said no, right?

3 A. I said I didn't recall it, but I'm sure that I didn't.

4 Q. You're sure that you didn't. Could you highlight the third
5 paragraph from the bottom, please, actually, or the fourth from
6 the top, the one that starts an additional -- an additional
7 inducement for lender.

8 Now, the lender is Mr. Riehle, right, yes?

9 A. OK.

10 Q. Borrower agrees to grant lender 195,000 shares of Banneker
11 Inc. stock. Said stock will be issued at the time Banneker
12 becomes a publicly traded company; however, such stock shall be
13 issued as restricted stock.

14 Do you see that?

15 A. Uh-huh.

16 Q. And could you just put up for a moment 173 in evidence.

17 Do you see the an additional inducement -- the date of
18 this is May 7, 2007; the other was 2004 -- as additional
19 inducement and interest for lender, borrower agrees to grant
20 lender 1,546,875 shares of Banneker Inc. stock. Said stock
21 will be issued at the time Banneker becomes a publicly traded
22 company; however, such stock shall be issued as restricted
23 stock.

24 You knew in 2004 that you wanted to be a public
25 company, right?

D3CLLEV6

Holmes - cross

1 A. Incorrect.

2 Q. Incorrect?

3 A. Yes. Is this signed?

4 Q. No, this is not signed, but let me ask you a question about
5 signed.

6 Do you remember referring to a term sheet that you had
7 with the Levys after you met them in the fall of 2007?

8 A. No.

9 Q. Do you remember in response to questions by the prosecutor
10 that the prosecutor asked you about whether there was a term
11 sheet that you had with Mr. Levy?

12 A. Was that a letter of intent?

13 Q. Letter of intent, term sheet, by whatever words or
14 description.

15 A. Well, I remember talking about a letter of intent, not a
16 term sheet.

17 Q. A letter of intent is basically what the deal is, right?

18 A. A letter of intent is what the intent is on, is what you're
19 intending on entering into in terms of business, what I
20 understand.

21 Q. By the parties, in other words, two parties, it could be
22 more than two parties, enter into a letter of intent as to what
23 their understanding of the agreement is, right?

24 A. Correct.

25 Q. That's a fair statement, isn't it?

D3CLLEV6

Holmes - cross

1 A. Indeed.

2 Q. Well, the letter of intent on which you claim that Mr. Levy
3 was promising to raise \$2 million you lost?

4 A. No, I never said I lost.

5 Q. Can't find it?

6 A. I tossed.

7 Q. You tossed?

8 A. Correct.

9 Q. In other words, you actually have a memory of throwing the
10 document away?

11 A. I remember throwing all the documents away related to me
12 going public with the Levys when I moved.

13 Q. Let me see. You moved when?

14 A. I don't remember when it was. But during the time when I
15 moved, after our relationship was over, I had a box of
16 different things and I remember getting rid of it. I had no
17 use for it.

18 Q. So you had the term sheet that had been signed by Mr. Levy,
19 as you've testified, right?

20 A. At some point I did.

21 Q. And this is your move to Aurora, Colorado?

22 A. Yes.

23 Q. And when you moved to Aurora, Colorado, where were you
24 moving from?

25 A. I was moving from Aurora to Aurora in Aurora.

D3CLLEV6

Holmes - cross

1 Q. In other words, you were from Aurora?

2 A. No.

3 THE COURT: He's from Iowa.

4 MR. SHARGEL: Sorry?

5 THE COURT: He's from Iowa.

6 THE WITNESS: I'm from Iowa.

7 Q. When did you move to Aurora, Colorado, if I may know that?

8 A. I moved to Aurora, Colorado in 1983, '84.

9 Q. And was there -- seriously -- was there --

10 A. I moved several times while being in Aurora.

11 Q. When was the last move?

12 A. Last move was probably two and a half years ago, maybe.

13 Q. Two and a half years ago?

14 A. Correct.

15 Q. So it was sometime during 2011, approximately, '10, middle
16 of '10, '11?

17 A. Right around in there somewhere.

18 Q. And your testimony is in that move, you took all the papers
19 relating to Mr. and Mrs. Levy and going public, as you said,
20 and tossed them away?

21 A. No. I'm not saying I took all of them.

22 Q. I'm sorry?

23 A. I'm not saying I took all of them. I'm saying there was
24 some things in a box that was related to my -- me going public
25 and that. And some of those papers I looked through as I was

D3CLLEV6

Holmes - cross

1 downsizing, going from my place to that place, and there was no
2 further need for me to keep some of that paperwork.

3 So I'm not going to say all of it is gone. I don't
4 know -- I have some stuff in storage, but I remember throwing
5 some things away that were related.

6 Q. And the term sheet you remember being or the memo of
7 understanding --

8 A. I don't remember what all was in there. I don't remember
9 what all was tossed. I just remember some of the things that
10 were there.

11 Q. The bottom line is you don't have it now, right?

12 A. I may, but I don't know if I do, but it's a real
13 possibility I don't because there's a lot of things that got
14 tossed.

15 Q. When the government first notified you that you were going
16 to be called as a witness in this case, do you remember when
17 that was?

18 A. On or about.

19 Q. And when was it? Share it with us.

20 A. I don't know for sure. It was over a year ago.

21 Q. And you've met with the government a number of times?

22 A. No.

23 Q. Did anyone from the government on the telephone, any
24 prosecutor or the agent -- you know Agent Reinhardt, you've met
25 him, have you? He's not here right now, but do you remember

D3CLLEV6

Holmes - cross

1 Agent Reinhardt?

2 A. Yes.

3 Q. Did anyone say to you from the prosecution team, could you
4 see whether you could find that document?

5 A. Yes.

6 Q. And in response to that, to that question or request that
7 you try to find that document, did you conduct a search?

8 A. Well, it wasn't just that document. It was documents, you
9 know, in general related to this case.

10 Q. Let me show you what's been marked for identification as
11 176, A176.

12 MR. SHARGEL: Is that part of the stipulation?

13 Q. Could you take a look at that, please. Do you know what
14 that is?

15 A. It looks familiar. It looks like a business plan, Banneker
16 business plan.

17 Q. You're the CEO of Banneker. Do you recognize it as a
18 business plan?

19 A. It looks, again, like I said, it looks familiar.

20 MR. SHARGEL: Well, I offer it into evidence as a
21 Banneker business plan.

22 THE WITNESS: OK.

23 MR. SHARGEL: You don't get to rule. Request.

24 THE COURT: Do you have any objection, Mr. Master?

25 MR. MASTER: No. Go ahead.

D3CLLEV6

Holmes - cross

1 THE COURT: A176 is in evidence then.

2 (Defendant's Exhibit A176 received in evidence)

3 MR. SHARGEL: At the end of the day everyone could
4 just use a good laugh, so we're drawing no inference here.

5 Q. There we have Banneker watches and the business plan and
6 it's dated -- I'm going to give a copy to the government --
7 it's dated January 15, 2007. There are just two or three pages
8 I want to call to your attention.

9 MR. SHARGEL: Do you have page 6, Jennifer?

10 Q. Business plan was in order to attract investors, right?

11 A. Correct.

12 Q. All right. Page 6, could you -- I'm sorry, page 5, let's
13 go to page 5. And on the bottom right, the number on the right
14 side, actually, if you could blow up that whole portion right
15 there. Requirements, actually, we're going to have to go to
16 the narrative at the top of the page. I'm sorry. Forgive me.

17 Startup summary. Banneker watch's startup costs will
18 include the following startup costs for the business. You go
19 down to describe what you need, legal and syndication fees and
20 so on and so forth, as you described in your direct testimony,
21 correct?

22 A. Mm-hmm.

23 Q. That's the initial production of watches estimated at eight
24 watches at 250 each because you're going to develop an interest
25 in the watches, right?

D3CLLEV6

Holmes - cross

1 A. Yes.

2 Q. Now, can we go down to the actual costs. Do you see where
3 it says requirements, and once again you have the itemization
4 right down to travel and entertainment, etc., legal for lawyers
5 and how much money is needed, total startup expenses, right.

6 Total startup expenses, \$115,000, startup assets, cash
7 required, other current assets, initial watch inventory, total
8 assets, 450,000.

9 Total requirements, what you were telling people that
10 you needed to borrow was not \$2 million, it was \$565,000; do
11 you see that?

12 A. I see that.

13 Q. And that's something that was issued by your company,
14 right?

15 A. Yes.

16 Q. We turn to the next page, page 6.

17 So you have nothing in your possession where David
18 Levy promised to give you \$2 million and signed it, right?

19 A. Again --

20 Q. Tossed it.

21 A. -- let me be crystal clear with you on this. I have things
22 in storage. It was some of the things that were in the box
23 that was related to me going public and some information and I
24 threw that out. So in my storage, I don't know what all I may
25 have.

D3CLLEV6

Holmes - cross

1 Q. You knew the subject matter of your testimony when you came
2 here to be a witness, right?

3 A. Correct.

4 Q. So on this page, once again, total funding, \$565,000, see
5 that, total funding.

6 And you also made projections in connection with this
7 business, right?

8 MR. SHARGEL: Told I have to use the Elmo for the
9 page 2. Could I have the Elmo?

10 Judge, it's two minutes to five. I think I'd like to
11 end with another subject, so I'm not going to fool around with
12 the Elmo.

13 THE COURT: OK.

14 MR. SHARGEL: And we've been sitting through this.

15 Q. So let me ask you a question. It's going to take two
16 minutes. I'm going to just ask you this question and we'll
17 resume tomorrow morning.

18 When you came in or by whatever means, telephone,
19 meeting, when you spoke to representatives of the government on
20 March 2, 2013, a week ago Saturday, were you in New York a week
21 ago Saturday?

22 A. A week ago Saturday, I may have been. I know I was just
23 here a couple weeks ago, so.

24 Q. Could I have Government Exhibit 350-19, please. You told
25 the government on -- that's not the right number. Page 7.

D3CLLEV6

Holmes - cross

1 You told the government on that Saturday, March 2,
2 2013, that you didn't even know who Mazuma Holdings was, and
3 you also told them that that signature at the bottom of the
4 page was a forgery, yes or no?

5 A. No.

6 Q. Is it your testimony, sir, that you did not tell government
7 investigators or assistant United States attorneys that you
8 were not aware of the identity of Mazuma Holdings or the
9 issuance of some opinion letter in connection concerning Mazuma
10 Holdings, do you recall telling the government that, yes or no?

11 A. Correct, I told them that I remember the name, but I
12 couldn't remember exactly what connection it was.

13 Q. So why did you tell them that signature that you recognized
14 on direct examination as your signature, why did you tell them
15 that signature wasn't yours?

16 A. Why did I tell them that?

17 Q. Yeah, why did you tell them that?

18 A. Because that signature is not mine.

19 Q. That signature is not yours?

20 A. Correct.

21 THE COURT: I think, Mr. Shargel, you have one more
22 question?

23 MR. SHARGEL: No.

24 THE WITNESS: What is your question again? I'm sorry.

25 Q. My question is --

D3CLLEV6

Holmes - cross

1 A. I'm missing --

2 MR. SHARGEL: May I, Judge?

3 THE COURT: Yes.

4 Q. My question is on March 2, 2013, which was a week ago
5 Saturday, is it not a fact, sir, that you, in discussions with
6 the United States Attorney's Office or their representatives,
7 said that you were not aware of the identity of Mazuma
8 Holdings; do you remember telling them that?

9 A. I remember telling them that the name sounded familiar, but
10 I couldn't exactly place where I knew them from.

11 Q. And now less than a week and a half later, now you are by
12 your oath testifying about dealings and transactions with
13 Mazuma Holdings, sir?

14 A. I remember the name Mazuma Holdings and then later on it
15 came to me that that was who I ended up doing the 504 with. I
16 never met these people, didn't really know them. I did a
17 transaction with them twice. So I knew the name but I couldn't
18 really put it together.

19 Q. Did you put together -- and this is the last question,
20 Judge -- did you put together the fact that they had given you,
21 Mazuma Holdings had given you \$140,000, you put that together?

22 A. I knew that we had done some 504s, so I did put that
23 together, yes.

24 THE COURT: All right. We're going to break now and
25 resume tomorrow morning at 10 o'clock with Mr. Holmes. Thank

D3CLLEV6

Holmes - cross

1 you very much.

2 (Jury not present)

3 THE COURT: Mr. Holmes, let me instruct you on the
4 record. You're on cross-examination now so don't talk to the
5 government. All right?

6 THE WITNESS: OK.

7 THE COURT: OK. You can talk to the government but
8 not about your testimony.

9 THE WITNESS: OK.

10 THE COURT: Thanks very much. Good night. You can
11 step down.

12 (Witness not present)

13 THE COURT: Mr. Srebnick, you had something you wanted
14 to raise?

15 MR. SREBNICK: Yes. You are correct. Just not
16 urgent.

17 THE COURT: Not urgent.

18 MR. SREBNICK: The issue is we need to take up at some
19 point whether the government will be able to prove up that some
20 of the press promotions that have been shown to witnesses and
21 that were made part of the charts are tied to Donna Levy.

22 There are certainly some that the government can
23 prove. There are others we expect to turn out to just be folks
24 that were copying and pasting and had no connection to Donna
25 Levy, just happened to be running their own promotion campaign.

D3CLLEV6

Holmes - cross

1 THE COURT: OK. That's all?

2 MR. SREBNICK: I want to make sure that was understood
3 on the record. We had discussed that with government counsel,
4 and we'll take it up at the end of the case.

5 MS. COHEN: Your Honor, we had told defense that we
6 would match some of it through the bank records. But in any
7 event, if someone cut and pasted from one of Donna Levy's
8 sites, that would be relevant and admissible.

9 MR. SHARGEL: Your Honor, I would like to put one
10 thing on the record. We have the same situation that we had
11 before in connection with the Giglio disclosure where there was
12 an inconsistency about the naturalization process.

13 Here in a letter to us dated March 3, 2013, and the
14 reason I kept saying March 2 is because the letter says
15 yesterday. Yesterday Mr. Holmes was asked to review
16 documents -- and I'm paraphrasing, but I have Mr. Master
17 standing right next to me. Government Exhibit 350-19 -- which
18 was just on the screen -- concerning issuance of shares to
19 Mazuma Holdings was not his -- I'm sorry. He indicated,
20 however, that the purported signatures and initials concerning
21 350-19 concerning issuance of shares to Mazuma Holdings was not
22 his and he was not aware of the identity of Mazuma Holdings.
23 This is a company that gave him \$140,000 four years ago.

24 The bottom line is it's a prior inconsistent
25 statement. I think we can do it through stipulation the same

D3CLLEV6

Holmes - cross

1 way that we're in the process of doing it with the other issue
2 with --

3 THE COURT: I was going to ask you what happened to
4 that other issue?

5 MR. SHARGEL: We're just working on the wording of the
6 stipulation. It could be read later. It's not that it has to
7 be announced at the moment.

8 THE COURT: OK.

9 MR. SHARGEL: We'll deal with it. We can get it done
10 by tomorrow. I think it's all right in its present form.
11 We'll have the stipulation tomorrow.

12 THE COURT: All right. On this topic or on the other
13 topic?

14 MR. SHARGEL: I would ask the government to draw, as
15 it did before, a stipulation on this topic as well.

16 THE COURT: All right.

17 MR. MASTER: We'll discuss with counsel and we'll
18 advise the Court in the morning.

19 THE COURT: Ms. Cohen, what do you intend to do with
20 Mr. Srebnick's?

21 MS. COHEN: As I informed Mr. Srebnick, we would go
22 through the bank records and show him how the different
23 websites connect Donna Levy, the unindicted coconspirators,
24 Eric Cusimano, and we would flag that for him.

25 And as to those we can't connect through any bank

D3CLLEV6

Holmes - cross

1 records, if the text is lifted directly from a promotion that
2 Donna Levy did, we think it's relevant and admissible anyway.

3 THE COURT: So I understand that you're taking the
4 world in two parts. One part you can show a connection.

5 MS. COHEN: Correct, your Honor.

6 THE COURT: The other part will say Donna Levy issued
7 and someone else cut and paste and rebroadcast her news and
8 information?

9 MS. COHEN: Correct. I don't know if that exists,
10 your Honor, so we're going to take some time tonight and look
11 through it and we'll reconvene with defense counsel and report
12 back to the Court.

13 THE COURT: I guess we have to wait, Mr. Srebnick.

14 MR. SREBNICK: There's a third category which is some
15 of these websites just do their own "technical analysis" and
16 say look at Cardiac go, get in while it's hot. Some of those
17 are I believe in the Government Exhibits and appear to be third
18 parties that are watching Cardiac go, so to speak, and trying
19 to get their members to follow along. So we'll work it out
20 with the government and report back to you hopefully tomorrow.

21 THE COURT: All right. Fine. Anything else?

22 MR. MASTER: No, your Honor.

23 THE COURT: I have an afternoon calendar.

24 MS. COHEN: Thank you.

25 (Adjourned to March 13, 2013 at 10 a.m.)

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GOVERNMENT EXHIBITS

Exhibit No.	Received
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S-6, 701-1, 701-2	880
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300-A, 300-B	883
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301-1, -2, -3, and -4	916
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201-41776
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301-1, -2, -3, and -4916
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DEFENDANT EXHIBITS

Exhibit No.	Received
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170947
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1	A121-A811
2	A121B827
3	A126830
4	A128807
5	A173945
6	A176954
7	A211814
8	A212833
9	A56852
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